

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



855

BRIEF FOR APPELLANT  
AND APPENDIX

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United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,979

PHRONSIE IRENE MARSHA SITWELL,

*Appellant,*

v.

THE GEORGE WASHINGTON UNIVERSITY,  
d/b/a THE GEORGE WASHINGTON UNIVERSITY HOSPITAL

and

DR. BRIAN BLADES,

*Appellees.*

Appeal from the United States District Court  
for the District of Columbia

United States Court of Appeals  
for the District of Columbia Circuit

FILED SEP 22 1970

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**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 23,979

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PHRONSIE IRENE MARSHA SITWELL,

*Appellant,*

v.

THE GEORGE WASHINGTON UNIVERSITY,  
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and

DR. BRIAN BLADES,

*Appellees.*

---

BRIEF FOR APPELLANT

---

STATEMENT OF ISSUE PRESENTED

Whether or not a general release by an injured party, of the one responsible for his original injury, bars an action by the injured party against a physician and hospital for negligent treatment of the injury unless that is the positive intention of the parties to the release, and unless there has been full compensation in fact for all damages.

### STATEMENT PURSUANT TO RULE 8(d)

Pursuant to Rule 8(d) of the General Rules of this Court, counsel for appellant states to the Court that the pending case has NOT previously been before this Court under the same or similar title.

### JURISDICTIONAL STATEMENT

This is an appeal by plaintiff, unsuccessful in the trial court (although the recipient of a jury verdict in her favor) from a judgment n.o.v. in a bifurcated trial pursuant to Rule 42(b), F.R.C.P., where the only issue was as to the scope of an alleged release. This is a medical and hospital negligence case, the complaint being in one count charging negligence against both defendants.

The trial court had jurisdiction of the cause under and by virtue of Title 11-306, D. C. Code of Laws, 1961 Edition, as amended.

Jurisdiction of this Court is founded on Title 28, U.S. Code, Section 1291.

### REFERENCES AND RULINGS

ORDER, dated December 22, 1969, granting judgment n.o.v. and/or new trial, to defendants. (In original District Court file.)

ORDER, by fiat in margin of plaintiff's Motion to Reconsider, dated January 12, 1970, indicating "considered and denied"; "R.B.K., January 12, 1970" also noted in page 3 of the Docket Minute Entries.

### STATEMENT OF THE CASE

Appellant (plaintiff below) is a white, 63 year old widow, retired for disability from the public school system of the District of Columbia after more than 20 years of teaching in the public schools of this city.

In May of 1962 she entered the George Washington University Hospital, where she underwent two thoractomies by the individual defendant, a surgeon, for the repair of a hiatal hernia. She remained as a patient in said hospital until June 10, 1962, when she was discharged with a serious staphylococcus aureus infection, a Levin tube in her stomach, and foreign metallic objects in her anatomy. Immediately upon her discharge she was taken by station wagon to the Washington Sanitarium and Hospital in Takoma Park, Md., where she was immediately hospitalized and placed in isolation upon antibiotics, where she remained until June 25, 1962, after which she was transferred to the Bedford Memorial Hospital at Bedford, Va., remaining therein until July 2, 1962.

The instant action was filed in the District Court on May 14, 1965 against the hospital and the surgeon, in a one-count complaint charging negligence as to both defendants. After service of process was effected, the defendants answered, and the usual discovery was then undertaken (interrogatories, depositions, etc.). The plaintiff's pre-trial deposition was taken on September 25, 1967 in the office of counsel for the hospital. When queried as to any prior claim litigation, she testified, on page 30 of said deposition:

"A. Well, in connection with the accident on the island, for which the District of Columbia and the contractor should have been responsible. It was settled out of court. Not to very much advantage." \* \* \*

Defense counsel then asked her:

"Q. Let me ask you, Mrs. Sitwell, the suit against the District of Columbia and the contractor arising out of the automobile accident where you were in collision with the island — where was that filed?

A. There were two filings, one in Baltimore against the contractor, Mr. Carro, I think it was, and then in the District here.

Q. Were those cases tried separately or settled separately or what?

- A. No. One was dependent on the other. They were treated as a unit."

On page 32 of plaintiff's pre-trial deposition, defense counsel then asked her:

"Q. What injuries were you claiming in your suit against the District of Columbia and the contractor in Baltimore?

- A. Well, the biggest thing had to do with the possibility of the creation of the hiatal hernia condition; that is, my head hitting the top of the car and my going over the wheel.

And a hiatal hernia — that is, the diaphragm is a very strong thing. It takes a tremendous blow to rupture it. And I think it must have been a heavy blow. I'm sure it was.

Q. Did you claim any injuries other than the hiatal hernia?

- A. Yes. My arms and knees were hurt and, going back and forth as one would in a case of this kind, it would naturally shake up a person.

Q. Were you claiming in that suit against the District of Columbia and the contractor — in those suits I should say — that the necessity for the hospitalization at George Washington was due to the injuries suffered in the accident?

- A. I wouldn't say altogether. I don't recall it now. I'd have to look at it. I should say certainly that was one aspect of it. It's very difficult — I mean, when a person is hurt a number of times, it's difficult to pinpoint and say this particular thing did this particular thing at any one time. I mean, a lawyer can't do it, a doctor can't do it, a patient can't do it. I would say certainly that it was a highly contributory factor.

Q. In any event, those two cases were settled; is that right?

- A. Yes.



Q. What was the amount of the settlement?

\* \* \* \* \*

A. No, it wasn't 1,000; it was 1,500. I believe it was last year. Probably the first part of last year. But I'm not quite certain about that.

Thereafter, authorizations were furnished by plaintiff to defense counsel to examine x-rays in the possession of Sibley Memorial Hospital; Dr. Maurice H. Herzmark of this city and Dr. George Ferre of Lynchburg, Va., and Dr. Andre Barrabini, of this city; defendants had plaintiff x-rayed at George Washington University Hospital, took further depositions, and although defendants filed opposition to plaintiff's Certificate of Readiness, the case was ultimately pre-tried on February 3, 1969, and the parties made the required exchange of witness lists, the case then being at issue and ready for trial.

In mid-September 1969, counsel for the hospital filed a Motion to Require Further Pre-trial Proceedings, seeking leave to plead as an affirmative defense a release executed by plaintiff on February 2, 1966 in connection with a Baltimore federal court action against the Paramount Construction Co., which release also released the District of Columbia and terminated an action against the District of Columbia in this jurisdiction, arising out of a motor vehicle accident in this city which had occurred on October 31, 1960. Counsel for the individual defendant then filed a separate motion concurring in the request for supplemental pre-trial proceedings. At that time the action had been set for trial on the merits for October 20, 1969.

Although plaintiff, by counsel, filed a formal Opposition on September 22, 1969 to the motions for supplemental pre-trial, the Pre-Trial Examiner, by order of October 3, 1969, granted the defendants' motion, and further recommended that as to this sole issue the trial be a bifurcated one pursuant to Rule 42(b), F.R.C.P., as to the scope and validity of the said Release as to whether or not it released the instant defendants.

Trial on said issue was had before a jury and Judge Richmond B. Keech on November 20, 21 and 24, 1969, resulting on said latter date in a verdict of the jury in favor of plaintiff to the effect that said Release did not apply to these defendants, and had no legal effect to release them, as claimed by defendants.

To this adverse verdict and judgment thereon, the defendants then filed a Motion for Judgment N.O.V. and/or for New Trial, to which the plaintiff, by counsel, filed a formal Opposition. The trial court granted the motion, by fiat, to which plaintiff moved for Reconsideration thereof, which latter motion was denied, by fiat, thus ending the litigation and plaintiff's claim, to which action of the trial court the plaintiff filed a timely Notice of Appeal.

#### STATEMENT OF POINT ON APPEAL

The trial court erred in granting judgment n.o.v. for defendants on the single issue submitted to the jury, i.e., the scope and validity of the alleged Release insofar as these defendants are concerned, the jury having found, after testimony, argument of counsel and proper instructions of the court, that said release did not have the legal effect of Releasing these defendants from their alleged liability to plaintiff for professional negligence.

#### SUMMARY OF ARGUMENT

A GENERAL RELEASE DOES NOT IN AND OF ITSELF CONSTITUTE A BAR TO AN ACTION AGAINST A HOSPITAL AND SURGEON WHO TREATS THE INJURY, UNLESS THAT IS THE POSITIVE INTENTION OF THE PARTIES TO THE RELEASE AND UNLESS THERE HAS BEEN FULL COMPENSATION IN FACT FOR ALL OF THE DAMAGES.

## ARGUMENT

This precise point has apparently concerned this Court on only one occasion, that being in *Fletcher v. Hand*, 123 U.S. App. D.C. 182, 358 F.2d 549 (1966), where, in a split decision (Judge Fahy dissenting), Judge McGowan, speaking for the Court, affirmed the action of Judge Holtzoff in dismissing a claim for malpractice, but he was careful to point out (in the majority opinion) that

"\* \* \* we address ourselves hereinafter *only to Virginia law, and that what we say or do has relevance only to it.*"

Judge McGowan also pointed out that:

"To the extent that the original tort-feasor is accountable for the damage caused by medical negligence in the treatment of the injuries caused by him, he stands in the relationship of a *joint tort-feasor* to the offending physician; and a release to the former discharges the latter. \* \* \*" (Italics supplied).

In *Fletcher, supra*, this Court strongly relied upon the Virginia case of *Corbett v. Clarke*, 187 Va. 222, 46 S.E. 2d 327 (1948).

In his well-reasoned dissent, Judge Fahy states:

"The Corbett court then states that the concept of proximate cause is recognized and applied in Virginia; that is, negligence carries with it liability for consequences which, in the light of attendant circumstances, could reasonably have been anticipated by a prudent man, but not for casualties which, though possible, were wholly improbable: 'One is not charged with foreseeing that which could not be expected to happen.'"

And he concludes:

"There is every reason to believe that in our case the Virginia court would hold that the issue of proximate cause is for a jury to decide.

"Ordinarily, negligence, contributory negligence and proximate cause are jury questions. It is only when reasonable men may draw but one inference from the facts that they become questions of law for the court to decide."

In the instant case the present defendants were not "joint tort-feasors" with the Paramount Construction Co. and the District of Columbia in the October 31, 1960 motor vehicle accident, which occurred in the District of Columbia. Their negligence did not occur until May and June 1962 (a year and a half after the motor vehicle accident). They were therefore successive, or independent tort-feasors, and produced an entirely new injury (a staph infection and foreign bodies left in the human anatomy).

Plaintiff specifically testified, and was corroborated by one of her counsel in the Baltimore case, as well as Miss Shook, a signatory witness to the release dated February 2, 1966 (Defendant's Exhibit 1) (at which time her malpractice case was at issue and had been pending since May 14, 1965), that when she executed same she intended to release ONLY the Paramount Construction Co. and the District of Columbia. She was further corroborated in that statement by the correspondence of defense counsel in the Baltimore case, and by that of her Baltimore attorney in the Paramount case. And when the alleged special damages claimed in both the Baltimore case and in the instant case be considered, no one of common sense would agree that the \$1,500.00 consideration for the Baltimore release was full compensation for all of plaintiff's damages.

In *Dickow v. Cookinham*, 123 Cal. App. 2d 81, 266 P.2d 63 (1954), an action against two physicians for malpractice, plaintiff sought recovery for an injury alleged to have resulted from a pressure sore under a cast because of the negligence of defendants in disregarding plaintiff's complaints and failing to make an examination to determine the cause thereof. At the trial the defendants were permitted to prove the execution of a release by the plaintiff to the tort-feasor causing the original injury, but the plaintiff was not permitted to prove that the amount paid did not cover the malpractice injuries and

was not intended to release the defendants. A judgment on a verdict directed for the defendants was reversed on appeal, which held that the evidence was sufficient to preclude direction of a verdict for the defendants on the issue of their negligence, and that error was committed in rejecting plaintiff's proffered evidence as to the release, which would absolve defendants from liability only if it constituted compensation for both injuries. Quoting from an earlier California case, *Ash v. Mortenson*, 24 Cal. 2d 654, 660, 150 P.2d 876, at p. 879, the court in *Dickow* stated:

"But whatever may be the rule with regard to a settlement with joint or independent tort-feasors whose acts concur to produce a single injury, it does not follow that such presumption should be indulged where, as here, the injured person's claim embraces separate injuries caused by independent successive tort feasons and is liquidated by a judgment against the original tort feason.

The *Dickow* decision was the subject of an exhaustive annotation in 40 ALR 2d 1075.

In line with *Dickow*, *supra*, and *Ash*, *supra*, see:

*Feinstone v. Allison Hospital, Inc.*, 106 Fla. 302, 143 So. 251 (1932);

*Piedmont Hospital v. Truitt*, 48 Ga. App. 232, 172 S.E. 237 (1934);

*Phillips v. Werndorff*, 215 Iowa 521, 243 N.W. 525 (1932);

*Keown v. Young*, 129 Kan. 563, 283 P. 511 (1930);

*Purchase v. Seelye*, 231 Mass. 434, 121 N.E. 413 (1918);

*Seymour v. Carroll*, 43 Ohio App. 60, 182 N.E. 647 (1932);

*Mainfort v. Giannestras*, 49 Ohio Opps. 440, 111 N.E. 2d 692 (1951);

*Corbett v. Clarke*, 187 Va. 222, 46 S.E. 2d 327 (1948);

*Makarenko v. Scott*, 132 W. Va. 430, 55 S.E. 2d 88 (1949);

*Andrews v. Davis*, 128 Me. 464, 148 A. 684 (1930).

In *Andrews v. Davis, supra*, the physician against whom the action was brought had been directed by his employer, the original tort-feasor, to examine the plaintiff, but had not been accepted by the plaintiff as his physician for treatment. The injury caused by this physician consisted of a new fracture resulting from a negligent examination, after the original fracture had already healed. It was held that the plaintiff was entitled to recover from the negligent physician, although he had executed a release in favor of the original tort-feasor who had employed the physician to examine the patient, on the theory that the employer was not responsible for the negligence of the physician where the employer used due care in his selection, and did not undertake to direct such physician as to what he should do and how he should do it, since in the absence of the assumption of such directory power, the relation of the surgeon to the injured person was that of an independent contractor liable for his own torts, especially in the case where the arrangement did not include treatment, but was limited to examination, and where the negligence of the surgeon resulted not in the aggravation of the original injury, but in causing an entirely independent injury related in no way to the first by any rational line of causation.

Appellees, in argument in the trial court, relied heavily upon the *Annotation in 40 ALR 2d 1075 (1955)*, "Release of one responsible for injury as affecting liability of physician or surgeon for negligent treatment of injury."

However, they failed to mention the December 10, 1968 decision of the Supreme Court of Iowa in *Smith v. Conn*, (Iowa), 163 N.W. 2d 407 (1968), which completely demolishes the above-mentioned annotation.

In *Smith v. Conn, supra*, the minor plaintiff had broken her leg in a fall on church property, and her conservators executed a full and complete release to the church "and all other persons, firms and corporations" for \$4,708.00. The defendant osteopath had treated the plaintiff for six months in a negligent manner, which necessitated subsequent surgery by another surgeon. It was held, in REVERSING a ruling for the defendant on this point of law, that the injured



party may recover in an action against the treating physician for malpractice even though the patient had settled his claim against the original tort-feasor; that the defendant physician is charged with *subsequent* wrong contributing to the damage for which the original released wrongdoer was liable; that the church and the osteopath, having acted neither in concert nor having contributed concurrently to the same wrong, *were not joint tort-feasors*; that their wrongs were independent and successive, and that the plaintiff had two separate and distinct causes of action.

Said the Iowa Supreme Court, in *Smith v. Conn.*:

"The trial court, after careful study of our cases and recognition of recent cases in other states, reluctantly agreed with defendant that, under our case *Phillips v. Werndorff* (215 Iowa 521, 243 N.W. 525), the release absolved the doctor from liability. The trial court acted correctly under our prior cases, but plaintiff argues the rule in *Phillips v. Werndorff, supra*, should be changed. We agree and therefore reverse and remand.

"1. The legal propositions set out in the *Phillips* case are (1) aggravation of an injury resulting from the unskilled treatment of a physician, if reasonable care was observed in his employment, is one of the elements of damages for which the original wrongdoer is liable; (2) only one satisfaction for an injury received may be had; 'that is to say, that, if a settlement and release is obtained from one who is liable for all of the suffered injuries and compensation made therefor, no action may be maintained against another, who may also have been liable for the whole or some part thereof'; (3) these rules have been applied in actions against the physician or surgeon who treated the injury.

"Although the general principle that there may be but one satisfaction for an injury received does not necessitate the broad rule as stated in proposition (2) above (see *Bolton v. Ziegler*, (D.C. Iowa), 111 F. Supp. 516), it may be conceded *Phillips v. Werndorff, supra*, placed Iowa with the existing majority of states referred to in the annotation at

40 ALR 2d 1075, 1078: "Apart from particular theories, it is the great weight of authority that a general release executed in favor of one responsible for the plaintiff's original injury, *at least if a different intention is not positively revealed by the language of the release, or the circumstances*, precludes an action against a physician or surgeon for damages incurred by his negligent treatment of the injury, *at least in the absence of a finding that the negligence of the physician or surgeon produced an entirely new injury.*" (Italics supplied).

"The minority rule is stated: 'A small minority of courts have held that a release by an injured party of the one responsible for the injury does not of itself, in the absence of language indicative of an intention on the part of the parties, preclude an action by the injured person against a physician or surgeon for negligent treatment of the injury, at least unless there has been full compensation in fact for the plaintiff's total injuries.' As will be seen, the small minority has grown in the past few years."

"Iowa and twenty other jurisdictions are cited as states following the majority rule in 1955 when the annotation was published. Since then the later case service notes several states which have changed their position and now explicitly follow the minority rule.

"Listed in support of the minority rule in the original annotation are CALIFORNIA, *Ash v. Mortenson*, 24 Cal. 2d 654, 150 P.2d 876, *Dickow v. Cookinham*, 123 Cal. App. 2d 81, 266 P.2d 63, 40 ALR 2d 1066; NEW HAMPSHIRE, *Wheat v. Carter*, 79 N. H. 150, 106 A. 602. By later case service we find MASSACHUSETTS, *Selby v. Kuhns*, 345 Mass. 600, 188 N.E. 2d 861; MINNESOTA, *Couillard v. Charles T. Miller Hospital, Inc.*, 253 Minn. 418, 92 N.W. 2d 96; NEVADA, *Hansen v. Collett*, 79 Nev. 159, 380 P. 2d 301; NEW JERSEY, *Daily v. Somberg*, 28 N. J. 372, 146 A.2d 676, 69 ALR 2d 1024; NEW YORK, *Derby v. Prewitt*, 12 N.Y. 2d 100, 236 N.Y.S. 2d 953, 187 N.E. 2d 556; NORTH CAROLINA, *Galloway v. Lawrence*, 263 N.C. 433, 139 S.E. 2d 761; OREGON (Federal Court applying Oregon law), *Rudick v. Pioneer Memorial Hospital*,



(9 Cir.), 296 F.2d 316; and WASHINGTON, *DeNike v. Mowery*, 69 Wash. 2d 357, 418 P.2d 1010, now adopt the minority rule. Most of the foregoing states were listed with the majority when the annotation was published but have changed position since that time. On the other hand numerous cases are cited where the appropriate court has continued to follow the majority rule. Our real concern here is the validity of the common-law rule, 'The release of one joint tort-feasor releases all', as applied to a subsequent or successive tort-feasor; *i.e.*, a physician treating injuries received from the original wrongdoer." (Italics supplied).

In addition to the foregoing list of states which have changed position on this subject, can now be added ALASKA, in the 1969 decision in *Young v. State*, 455 P.2d 889 (1969), which specifically held that a release of one tort-feasor does not release other *joint* tort-feasors unless the release expressly so provides, reasoning that it would bring most clarity to this ambiguous area, insure that the intent of the parties to the release would be given effect, and would greatly minimize the possibility of any party being misled as to the effect of the release.

Although our present case does not involve *joint* tort-feasors, but rather *successive* tort-feasors (as in *Smith, supra*), the Alaska court in *Young, supra*, relied heavily upon the excellent leading opinion of Judge Rutledge in *McKenna v. Austin*, 77 App. D.C. 228, 134 F.2d 659 (D.C. Cir., 1943).

Many other cases are cited in an excellent article entitled *MEDICAL MALPRACTICE - SATISFACTION BY ORIGINAL TORT FEASOR AS DEFENSE*, by David M. Harney, Esq., published in 18 DEFENSE LAW JOURNAL, No. 4, p. 395.

And so profound an effect did the *Smith v. Conn* case, *supra*, have upon the entire medical profession, that it prompted the American Medical Association, in its December 1, 1969 issue of THE CITATION, Vol. 20, No. 4, p. 51, to comment thereon, and to point out that the Iowa court, in *Smith v. Conn*, had held that it was a question for the jury as to whether or not the money paid by the landowner church did, in fact, compensate the victim for injuries

caused by the alleged professional negligence. The comentator in the CITATION, *supra*, also noted that if the release either indicates that the victim intended to discharge *only* the original wrongdoer or contains an express reservation of rights against other parties, it will not, *even under the majority rule*, bar an action against a physician for negligent treatment of the injury, referring to "DOES RELEASE OF THE ORIGINAL TORT FEASOR RELEASE A SUBSEQUENT NEGLIGENT ATTENDING PHYSICIAN?", by Frank R. Miller, Esq., in 36 INSURANCE COUNSEL JOURNAL, No. 3, p. 360 (July 1969), published by International Association of Insurance Counsel, 229 E. Wisconsin Ave., Milwaukee, Wisconsin 53202.

To further show the thinking of defense counsel in this confused and ambiguous area of 'releases,' attention is directed to the article, "TO COVENANT OR NOT TO COVENANT" in THE FORUM, Vol. 5, No. 1, p. 69 (October 1969), published by the Section of Insurance, Negligence and Workmen's Compensation of the American Bar Association.

In granting judgment n.o.v. in this case for defendants, AND in the alternative granting a new trial ONLY if the judgment n.o.v. be reversed, the only reason given by the trial court for this alternative of granting a new trial was that the jury "failed to follow instructions." No such claim was made by appellees in their motions for judgment n.o.v., etc.; and the trial court, in ruling by fiat on appellant's motion to reconsider the grant of judgment n.o.v., did not specify in what respect the jury failed to follow his instructions. The trial court's instructions to the jury are reproduced in full in the Joint Appendix, and the jury's special verdict "finding the issue in favor of plaintiff," on the scope and validity of the alleged release, was in full accord with the court's instructions.

**CONCLUSION**

Wherefore, in view of the foregoing argument, points and authorities, it is respectfully submitted that the trial court erred in granting judgment for defendants n.o.v.; and in alternatively ruling and granting a new trial "only if the judgment n.o.v. is reversed"; and that upon review, this Court should reverse BOTH such rulings of the trial court, and remand the case for trial upon the merits of the defendants' alleged professional negligence.

Respectfully submitted,

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## APPENDIX

### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

-----  
PHRONSIE IRENE MARSHA SITWELL  
1435 Holly Street, N. W.  
Washington, D. C.,

*Plaintiff,*

v.

THE GEORGE WASHINGTON UNIVERSITY,  
A Corporation, d/b/a The George Washington  
University Hospital, 23rd Street at Pennsylvania  
Avenue, N. W., Washington, D. C.

and

DR. BRIAN BLADES  
901 - 23rd Street, N. W.  
Washington, D. C.,

*Defendants.*  
-----

CIVIL ACTION  
NO. 1176-65

### CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>Proceedings</u>
1965	
May 14	Complaint, filed.
June 4	Answer of G.W.U. Hospital, filed.
June 16	Answer of Dr. Blades, filed.
June 16	Case CALENDARED.
June 24	Interrogatories of D to Plaintiff.
Sept. 13	Answer of Pltf. to Interrogatories.

<u>Date</u>	<u>Proceedings</u>
<u>1967</u>	
Feb. 10	Stipulation extending time to file Supp. Answers.
Feb. 20	Supplemental Answers of P to Interrogatories.
Aug. 10	Certificate of Readiness by Pltf.
Aug. 18	Motion for Medical Examination by Defts.
Aug. 22	Opposition to Motion for Medical Examination by Pltf.
Aug. 23	Notice of taking of Pltf's Deposition.
Sept. 21	Recommendation of P. Trial Examiner (Bunten) re: Medical Examination.
Dec. 1	Deposition of Pltf., filed. (Taken 9/25/67.)
<u>1968</u>	
Feb. 23	Certificate of Readiness by Pltf.
Feb. 28	Motion to Strike Certificate of Readiness by Defts.
Mar. 15	Recommendation of P. Trial Examiner re: Certificate of Readiness.
June 21	Notice of Dep. (Browning, for 7/16/68).
Aug. 8	Notice of Dep. (Browning, for 9/9/68).
Sept. 10	Motion for Protective Order, by Pltf.
Sept. 17	Opposition of Blades to Motion for Protective Order.
Oct. 4	Deposition of Browning, filed. (Taken 9/9/68.)
Oct. 17	Order denying Protective Order. McGuire, J.
Dec. 5	Stipulation continuing Pre-trial to 2/3/69.
<u>1969</u>	
Feb. 3	Pre-trial proceedings.
Feb. 18	Witness list of Blades, filed.
Feb. 28	Witness list of G.W.U. Hosp., filed.
Sept. 22	Motion to Require further Pre-trial Proceedings (Hosp.).



<u>Date</u>	<u>Proceedings</u>
1969	
Sept. 22	Opposition to above Motion (see cases cited).
Sept. 25	Motion of Blades for further Pre-trial proceedings.
Oct. 3	Deposition of John Nichols, filed. (Taken 7/16/68.)
Oct. 3	Recommendation of P. Trial Examiner re: above Motion.
Nov. 24	Verdict of jury ("find issue in favor of pltf.").
Dec. 4	Motion for Judgment N.O.V. and/or new trial.
Dec. 10	Opposition to Motion for Judgment N.O.V., etc.
Dec. 22	Instructions of both sides, filed.
Dec. 22	Order granting Motion for Judgment N.O.V., Judgment for Defendants N.O.V., or alternatively, for new trial, only if the Judgment N.O.V. is reversed. (Ct. - "jury failed to follow instructions.")
Dec. 30	Motion for Pltf. to Reconsider, attaching of Md. Opinion in <i>Kyte v. McMillion</i> .
1970	
Jan. 1	Opposition of Hospital to Motion to Reconsider.
Jan. 9	Opposition of Blades to Motion to Reconsider.
Jan. 12	Motion to Reconsider, DENIED, by fiat. (Keech, J.)
Jan. 21	Notice of Appeal.
Feb. 25	Reporter's Transcript of Proceedings, filed.

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[Filed May 14, 1965]

### COMPLAINT

(Damages for Personal Injuries sustained by Paying Patient against Hospital for negligence in failing to provide proper care and attention post-operatively; and against surgeon for malpractice.)

----- \* -----

(1) This Court has jurisdiction of the subject matter hereof, by virtue of Title 11-306, D. C. Code of Laws, 1961 Edition, as amended, and by virtue of the fact that the relief herein sought exceeds the sum of \$10,000.00.

(2) The plaintiff, Phronsie Irene Marsha Sitwell, is a white, female, adult citizen of the United States, resident of the District of Columbia, is otherwise sui juris, and brings this action in her own right.

(3) At all times mentioned herein, the corporate defendant maintained and controlled a hospital in the District of Columbia known as the George Washington University Hospital, for treatment of persons injured and sick, for consideration to be paid it, and particularly a surgical ward wherein patients who had undergone surgery in said hospital, could recuperate and convalesce under proper supervision and care.

(4) In the early part of May, 1962, the plaintiff entered the said defendant's hospital as a paying patient, for a thoracotomy.

(5) At all times mentioned herein, the defendant, Dr. Brian Blades, was engaged in practice as a physician and surgeon in the District of Columbia, and held himself out to the public as a competent and skillful physician and surgeon.

(6) On or about May 8, 1962, the said defendant, Dr. Brian Blades, pursuant to an agreement therefor between himself and plaintiff, performed an operation known as a thoracotomy upon plaintiff.

(7) The operation performed by the said individual defendant upon plaintiff necessitated cutting through the chest wall of plaintiff's body and, by direction of the said individual defendant, the plaintiff was placed under general anesthesia prior to the performance of the operation.

(8) After performance of the said thoracotomy by the individual defendant upon plaintiff, plaintiff remained in the said hospital for a considerable time thereafter, and was under the general care of both the said individual defendant and the corporate defendant.

(9) During the said post-operative period, certain agents, servants or employees of the corporate defendant, negligently pushed and mishandled the plaintiff, on and after May 14, 1962, during her convalescence, in such a manner as to negligently impair and disrupt the suturing and healing of the said original surgery, thus necessitating re-surgery by the individual defendant; and said agents, servants or employees of the said hospital were otherwise negligent thereafter and during plaintiff's continued hospitalization.

(10) On or about May 18, 1962, the individual defendant, Dr. Brian Blades, performed a second thoracotomy upon plaintiff, again placing her under general anesthesia, and requiring thereafter further hospitalization.

(11) From and after said second surgical procedure, the agents, servants or employees of the corporate defendant were again negligent in their care, treatment and management of plaintiff, thus further damaging the person of the plaintiff.

(12) Since said second surgical procedure and plaintiff's release from the said hospital, she has discovered that the individual defendant, Dr. Brian Blades, together with the agents, servants and employees of the corporate defendant, who should have known, have negligently left within the person of the plaintiff certain surgical clamps or other foreign bodies or materials, which have retarded her recovery from such surgery, and which has caused her great pain, suffering and anguish.

(13) The doctrine of res ipsa loquitur is applicable to plaintiff's against the defendants herein, in that at the time the said surgical clamps or other foreign bodies or materials were left in plaintiff's person, plaintiff was under general anesthesia and under the complete control of the defendants. If the defendants, corporate and individual, had performed the said surgical procedures with reasonable care, then, in the ordinary course, surgical clamps and foreign substances would not have been left in plaintiff's person.

WHEREFORE, the premises considered, plaintiff brings this action, and demands judgment against the defendants, and each of them, in the full sum of One Hundred Fifty Thousand Dollars (\$150,000.00), besides the taxable costs hereof.

DAVIS & MENDELSON  
Attorneys for Plaintiff,

By /s/ Earl H. Davis  
504 Federal Bar Building  
1815 H Street, N. W.  
Washington, D. C. 20006

-----  
DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all issues herein.

/s/ Earl H. Davis  
  
\_\_\_\_\_

[Filed June 4, 1965]

**ANSWER OF DEFENDANT, THE GEORGE WASHINGTON  
UNIVERSITY, A CORPORATION, D/B/A THE GEORGE  
WASHINGTON UNIVERSITY HOSPITAL**

First Defense

The Complaint fails to state a claim against this Defendant upon which relief may be granted.

Second Defense

This Defendant hereby asserts that the claim of the Plaintiff, in whole or in part, is barred by the statute of limitations.

Third Defense

This Defendant admits that the amount claimed in this suit is within the jurisdiction of the Court and that it maintains and operates a hospital and that it charges persons able to afford hospitalization for the hospital services rendered to such persons. It is admitted that the Plaintiff was a patient at the George Washington University Hospital in early May, 1962 and that Plaintiff was the patient of the Co-Defendant, Dr. Brian Blades and that Plaintiff underwent surgery performed by Dr. Brian Blades and further, that following said surgery, Plaintiff remained as a patient in the hospital under the care and direction of the Co-Defendant and being rendered throughout this period hospital services as directed. The allegations contained in paragraph (9) of the Complaint and asserted as to this Defendant are denied. The allegations contained in paragraph (11) and asserted as to this Defendant are denied. The allegations contained in paragraph (12) and asserted, in part, as to this Defendant are denied. Answering paragraph (13) of the Complaint, this Defendant denies that the doctrine of res ipsa loquitur is applicable to Plaintiff's claim against it and

denies all other allegations contained in paragraph (13) of the Complaint and asserted as to this Defendant. Further answering the Complaint, this Defendant denies each and every other allegation contained in the Complaint and asserted as to it.

Fourth Defense

This Defendant asserts that the hospital services rendered to Plaintiff by it were in accord with the standard and approved hospital procedure and practice in the District of Columbia and, therefore, this Defendant denies any negligence or fault of any kind on its part and prays that this cause be dismissed as to it.

GALIHHER, STEWART & CLARKE

By /s/ William E. Stewart, Jr.  
Attorneys for Defendant,  
George Washington Univ.  
Hospital  
1215 - 19th Street, N. W.  
Washington, D. C.

[Certificate of Service]

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[Filed June 16, 1965]

**ANSWER TO COMPLAINT OF DEFENDANT,  
DR. BRIAN BLADES**

Comes now the Defendant, Dr. Brian Blades, by and through his attorneys, Welch, Daily and Welch, and for answer to the complaint filed herein states as follows:

**FIRST DEFENSE:**

The complaint fails to state a cause of action upon which relief can be granted.

**SECOND DEFENSE:**

This defendant hereby asserts that the claims of the plaintiff in whole or in part are barred by the statute of limitations.

**THIRD DEFENSE:**

This defendant admits that the amount claimed in the suit is within the jurisdiction of the Court; admits that plaintiff is a white female allegedly a resident of the District of Columbia; admits that the corporate defendant maintained and operated a hospital in the District of Columbia known as the George Washington University Hospital; admits that in early May 1962, plaintiff was a patient of this defendant and as such entered the defendant hospital as a paying patient; admits that at the time mentioned in the complaint that he was engaged in practice as a duly licensed physician and surgeon in the District of Columbia; admits that he operated the plaintiff on or about May 8, 1962; admits that the plaintiff was under general anesthesia for the operation of that date; admits that following the operation the plaintiff remained in the George Washington University Hospital for a period of convalescence. The allegations of paragraph nine insofar as they apply to this defendant are denied; this defendant admits that the plaintiff was operated by him on May 18, 1962; so far as the allegations of paragraph eleven may apply to this defendant they are denied.

The allegations contained in paragraph twelve referred in part to this defendant are denied. Answering paragraph thirteen of the complaint this defendant denies that the doctrine of res ipsa loquitur is applicable to plaintiff's claim against him and denies all allegations contained in said paragraph thirteen of the complaint as relating to him. Further answering the complaint and each paragraph thereof, this defendant denies each and every allegation contained in the complaint as referred to him.



**FOURTH DEFENSE:**

This defendant asserts that the medical care and treatment rendered by him to the plaintiff were in accord with the standard and approved practices and in complete accord with good and approved medical practices as carried out by other physicians in the same branch of medicine as this defendant; this defendant denies any negligence or fault or any kind on his part and prays that this cause be dismissed as to him.

WELCH, DAILY & WELCH

By: /s/ J. Harry Welch  
505 Investment Building  
Washington, D. C.  
Attorney for Defendant  
Dr. Brian Blades

[Certificate of Service]

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[Filed February 3, 1969]

**PRE-TRIAL PROCEEDINGS**

Damages for personal injury due to negligence (malpractice).

THE PARTIES AGREE TO THE FOLLOWING STATEMENT OF FACTS  
AND STIPULATE THERETO:

The P was hospitalized at the D George Washington University Hospital from February 18 to March 11, 1962, and subsequently on May 7, 1962 she was re-admitted to the hospital where, on May 8, 1962, under general anesthesia, she was operated upon by the D Dr. Brian Blades, who specialized in surgery in the Washington, D. C. area. The operation was a modified Allison hiatal hernia repair.



On May 18, 1962, P was again operated upon by Dr. Blades undergoing repair of post-operative herniation of the stomach by counter incision in the diaphragm with necrosis of a portion of the stomach wall.

On or about May 25, 1962, the plaintiff was transferred to the psychiatric ward of D hospital and she was discharged on June 10, 1962.

PLAINTIFF CLAIMS that following her operation of February 19, and due to an undue amount of pain, particularly on swallowing, repeat x-rays of the neck, including gastro-graffin swallow, revealed a perforation of the upper esophagus, which then required drainage procedure of the retro-visceral space through a cervical incision. Following this, she underwent an upper G.I. series which revealed a hiatal hernia; that following the operation of May 8th by Dr. Blades, on being taken from the recovery room to her own hospital room, she was physically pulled and pushed by a hospital aid, causing severe pain, and possible injury to the surgical area involved. On May 14, 1962, she was taken from her bed and made to walk, by a hospital nurse, although unable to do so, and said nurse then caused plaintiff's body to be rotated in a Trendelenberg position, causing further injury to the operative area.

On May 24, 1962, although the doctors had ordered that she be given water only, the hospital staff gave her a full meal of solid food and during this period of hospitalization she was literally abandoned and permitted to roam about the ward unattended; that for a period of almost two full days there was no resident physician present for plaintiff's sister, who is a physician, to communicate with concerning P's condition and requirements; that and although plaintiff had a history of a convulsive reaction to drugs, she was given excessive doses of drugs, which delayed and retarded her recovery.

In the latter part of her hospitalization, she developed a staphylococcus aureus infection, and repeatedly requested that she be given antibiotics, which both the hospital staff and physicians refused, stating that the same was not "indicated."

When she was discharged on June 10, 1962, the infection referred to above was still present, and she was still carrying in her stomach a Levin tube, which is used in connection with gastric and intestinal operations. She asserts that during one or both of the surgical procedures performed by Dr. Blades, she was discharged with foreign metallic objects in her anatomy, visible upon x-ray.

Upon her discharge, she was taken by station wagon to the Washington Sanitarium and Hospital, in Takoma Park, Md., where she was immediately hospitalized, placed in isolation, and upon antibiotics, and in which hospital she remained until June 25, 1962. Upon leaving the Washington Sanitarium and Hospital, she was taken to Bedford, Virginia, where she was admitted to the Bedford Memorial Hospital from approximately June 25, 1962 to July 2, 1962.

Plaintiff has never fully recovered from such surgery, still suffers gastric pain, is required to remain on anti-spasmodic medication, and her condition appears to be permanent, due to her age. Although she has applied for re-employment as a teacher in the D. C. Public School system, she has been unable to secure a position, as a teacher, and has been obliged to supplement her disability retirement with occasional journalistic, and attempts at, writing.

She asserts that she was injured and damaged as the result of the negligence of the defendants, or their violation of hospital by-laws and rules of the Joint Commission on Hospital Accreditation as follows:

**AS TO DEFENDANT HOSPITAL:**

- (1) Pushing and mishandling the plaintiff-patient post surgery.
- (2) Insisting that plaintiff-patient walk, when she was in a debilitated condition following surgery.
- (3) Permitting the nursing staff to place plaintiff-patient in the Trendelenberg position for rotation following surgery.
- (4) Furnishing plaintiff-patient with solid diet following such surgery, contrary to physician's orders.

(5) Permitting plaintiff-patient to remain unguarded and unattended following surgery.

(6) Abandoning plaintiff-patient as described above.

(7) Allowing plaintiff-patient to be transferred to the psychiatric department for no valid medical reason.

(8) Failing, through its medical staff, to properly and adequately supervise plaintiff-patient's post surgery.

(9) Permitting plaintiff-patient to develop a staphylococcus aureus infection, and in failing and refusing to promptly administer antibiotics to counteract same.

(10) Permitting nurses' aids, and other hospital employees to keep plaintiff constantly awake at nights to discuss her personal affairs, when she required rest and quiet.

(11) Failure of the nursing staff to check plaintiff-patient's post-operative condition more often, particularly while she was under the effects of anesthesia.

(12) The hospital's violations of its own by-laws, and the Rules of the Joint Commission on Hospital Accreditation.

#### AS TO DR. BLADES:

(1) Departure from accepted surgical procedures in this type surgery, on the basis of the following:

(2) Failing to properly diagnose plaintiff's condition post-operatively, and particularly to discover the staphylococcus aureus infection, and to promptly administer antibiotics for the correction and alleviation of same.

(3) In failing to make proper and sufficient tests to determine and diagnose plaintiff's true condition, namely, no x-rays post-operatively.

(4) In ordering excessive medication by drugs, when he knew, or should have known, of plaintiff's history of convulsive drug reaction.

(5) In leaving foreign objects in plaintiff's anatomy following such surgical procedures, in failing to detect same, and in failing to remove same.

AS TO BOTH DEFENDANTS, plaintiff relies, in addition to the foregoing, on the doctrine of *res ipsa loquitur*, since she was under general anesthesia, and under the exclusive control of the Ds.

THE PLAINTIFF'S CLAIMED INJURIES are as stated in the narrative hereinabove, and HER CLAIMED SPECIAL DAMAGES are set out in the statement which is attached hereto, made a part hereof, and incorporated herein by reference marked "A."

THE DEFENDANT GEORGE WASHINGTON UNIVERSITY HOSPITAL asserts that the complaint filed in this case was filed on May 14, 1965, more than three years after certain of the acts complained of by the P and this D therefore asserts that the claim of the plaintiff, in whole or in part, is barred by the statute of limitations.

This defendant asserts that certain of the allegations made by the plaintiff against this defendant at time of the first pre-trial, and February 3, 1969, constitute new alleged causes of action, which are barred by the statute of limitations and as to which this D desires to engage in further discovery.

This defendant admits that it maintains and operates the George Washington University Hospital and that in early May, 1962, the plaintiff, as the patient of Dr. Brian Blades, was admitted to the hospital under the care and direction of her surgeon and receiving such hospital services as were directed by her surgeon. This D denies each and every allegation of negligence asserted as to it and denies that the doctrine of *res ipsa loquitur* is applicable to any of the complaints asserted by the P against this defendant.

This D asserts that the hospital services rendered to P by it were in accord with the standard and approved hospital procedure and practice in the District of Columbia.

THE DEFENDANT BRIAN BLADES denies all allegations of negligence made by the P as to him and denies that he inadvertently left any foreign body within the person of the P, asserting that his care and treatment of the P was within accepted standards of practice for like practitioners in Washington, D. C. in 1962.

BOTH DEFENDANTS deny P sustained injuries and damages of the nature and to the extent claimed.

#### FURTHER STIPULATIONS

The parties agree to file with the Clerk of the Court and to mutually exchange, on or before February 15, 1969, a list of the names and addresses of any witness known to them, including medical and expert witnesses, who have knowledge of any aspect of this case, indicating those who may be used at the trial. Impeachment witnesses are not to be included.

The parties agree to the mutual exchange of all medical reports of examining or treating physicians, now in hand, on or before February 15, 1969, and a similar exchange of all other such reports within 48 hours of the alert of this case for trial.

Counsel for P shall make the P available for the purpose of a physical examination by physician of Ds' choice before, but not to interfere with, trial date.

Counsel for P shall furnish the Clerk of Court and opposing counsel, on or before February 15, 1969, a written, itemized list of all special damages not listed herein which will be claimed at the trial, past, present and future, actual or estimated.

Counsel for P shall supply the Clerk of Court and opposing counsel, on or before February 15, 1969, a written statement which will list all the rules of the Joint Commission on Hospital Accreditation, and the by-laws of D Hospital which P claims were violated, and thereby constituted negligence.

On the Attachment marked "A," there is a list of stipulations requested by the plaintiff. Counsel for D Hospital will make no agreement with relation to these stipulations, and counsel for Dr. Blades will only agree to the admission of George Washington Hospital records, x-ray plates, and HEW Mortality Tables, otherwise assumes the position taken by counsel for the hospital.

The position assumed by the D Hospital's counsel with reference to the requested stipulation, is that, before he would agree to such stipulation, that plaintiff be required to identify the portions of the hospital safety manual published by the American Hospital Association and the specific rules of the Joint Commission on Hospital Accreditation, which P intends to rely upon and also that P be required to specify the purpose for which the by-laws of the medical staff of George Washington University Hospital would be relevant and the specific by-laws upon which plaintiff places reliance.

The Examiner has requested counsel to come to the trial with the maximum amount of authority to settle the case which will be allowed them by their principals.

/s/ John J. Finn  
Pre-Trial Examiner

**TRIAL COUNSEL:**

/s/ Earl H. Davis, Counsel for Plaintiff  
/s/ William E. Stewart, Counsel for Deft. Hospital  
/s/ Walter J. Murphy, Jr., Counsel for Deft. Blades

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[Filed September 22, 1969]

**MOTION TO REQUIRE FURTHER PRE-TRIAL PROCEEDINGS**

Comes now the Defendant, George Washington University, a corporation, leave having first been obtained for the filing of this motion, and moves the Court to enter an Order requiring further Pre-trial Proceedings in this cause and as reasons therefor states as follows:

1. Recently, in connection with preparation for trial of this case, counsel for the Defendant George Washington University, a corporation, obtained a photostat copy of a full and general release executed by Plaintiff herein on



February 2, 1966, copy of which is attached hereto and prayed to be read as a part hereof, which release, in the opinion of this Defendant and in accordance with law, inures to the benefit of this Defendant and does in fact constitute a full release of all claims made by the Plaintiff herein against all Defendants herein.

2. The discovery of and obtaining of this release was only recently made and was at a time considerably after the Pre-trial Proceedings in this case.

3. The Defendant desires that the Pre-trial Proceedings in this case be amended so as to include a claim by this Defendant (and presumably the Co-Defendant) that the Plaintiff has effectively released her claims and is barred from recovery herein. The defense of "release" is an affirmative defense under the Federal Rules of Civil Procedure and must be pleaded and it is therefore the view of this Defendant that the interests of justice require that Defendant be afforded the opportunity to so plead.

4. The Defendant herein represents that the evidence supporting its claim and interpretation under law of the release attached hereto is principally contained in the file of the United States District Court for the District of Maryland in Civil Action No. 15,041, entitled Phronsie I. M. Sitwell, Plaintiff v. Paramount Construction Co., Inc., wherein the pleadings including sworn answers to interrogatories by the Plaintiff, clearly show that Plaintiff was making the same claim for injuries and damages in that litigation (in addition to others) as she is making in this action for malpractice and that in the former action, she was attributing the need for the medical care referred to in this cause and all of the expenses incident thereto to the happening of the auto accident which was the subject of the action then pending in the Federal District Court in Maryland.



5. And for such other reasons as will be urged upon a hearing on this motion.

GALIER, STEWART & CLARKE

By /s/ William E. Stewart, Jr.  
Attorneys for Defendant,  
The George Washington  
University, etc.  
1215 - 19th Street, N. W.  
Washington, D. C. 20036  
FEderal 7-8330

NOTICE TO: Earl H. Davis, Esq.  
810 - 18th Street, N. W.  
Washington, D. C. 20006

PLEASE TAKE NOTICE, that the points to be submitted in support of this motion and the authorities intended to be used, are attached hereto. The rules of the above-named Court require that if you oppose the granting of the same, you shall within five days from the date of service of a copy thereof upon you, or such further time as the said Court may grant, or as the parties of this suit may agree upon, file in reply with the Clerk of said Court, a statement of the points and authorities upon which you rely and serve a copy thereof upon counsel for the Defendant named above.

/s/ William E. Stewart, Jr.

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POINTS AND AUTHORITIES

Rule 16, Federal Rules of Civil Procedure.

/s/ William E. Stewart, Jr.

[Certificate of Service]

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[Filed October 3, 1969]

**RECOMMENDATION OF PRE-TRIAL EXAMINER**

Upon consideration of the motion of the defendants to require further pre-trial proceedings; opposition filed by the plaintiff thereto and oral argument thereon, it is this 3rd day of October, 1969,

RECOMMENDED that defendants' motion be allowed and that, to expedite disposition of the case, the Pre-trial Order be, and it is hereby, amended by allowing each defendant to advance at the trial the defense of release by the plaintiff of the defendants, and it is

FURTHER RECOMMENDED that the Court, at the time of trial may, in accordance with the suggestion and agreement of counsel, at the time of hearing on the instant motion, and if the Court is so inclined, have the issue of the validity of the alleged release disposed of prior to consideration of the other issues involved in the action.

/s/ John J. Finn

NOTE: Under Local Civil Rule 9(i)(1) the above Recommendation becomes the order of the Court unless objections thereto are filed within five days in conformity with Rule 9(i)(2).

COPIES TO COUNSEL (by mail), 10/3/69.

/s/ John J. Finn

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**RELEASE**

In Full of All Claims

**DEFENDANT'S EXHIBIT NO. 1**

(Identified — p. 12)

(In Evidence — p. 200)

Reporter's Transcript

*IN CONSIDERATION* of the payment of *FIFTEEN HUNDRED and No/100 DOLLARS* to me in hand paid by Paramount Construction Company, Inc., 7614 Holabird Avenue, Baltimore, Maryland 21222; and the District of Columbia, I/~~W~~ do hereby release and forever discharge said Paramount Construction Company, Inc. and District of Columbia, and any and all other persons, firms and corporations whatsoever from any and all actions, causes of actions, claims and demands for, upon or by reason of any damage, loss or injury, which heretofore have been or which hereafter may be sustained by me in consequence of an accident on or about October 31, 1960, at or near the intersection at 17th Street, N. W. and Mt. Olivet Road, N. W., in the District of Columbia. This release extends and applies to, and also covers and includes, all unknown, unforeseen, unanticipated and unsuspected injuries, damages, loss and liability, and the consequences thereof, as well as those now disclosed and known to exist. The provisions of any State, Federal, Local or Territorial law or statute providing in substance that releases shall not extend to claims, demands, injuries or damages which are unknown or unsuspected to exist at the time, to the person executing such release, are hereby expressly waived.

IT IS FURTHER AGREED AND UNDERSTOOD that said payment is not to be construed as an admission of any liability.

*IN WITNESS WHEREOF* I/~~W~~ have hereunto set My/~~Q~~ hand and seal the 2nd day of February, 1966.

THIS IS A  
RELEASE  
IN FULL

/s/ Phronsie I. M. Sitwell

[SEAL]

Street Address

Age 58

City and State Bedford, Virginia

Witnessed by:

/s/ J. S. McCauley, Jr.

Address R.F.D. 2, Bedford, Va.

/s/ Beatrice L. Shook

Address Rt. 2, Bedford, Va.

-----  
 ) ss:  
 -----

On this 2nd day of February, 1966, before me personally appeared PHRONSIE I. M. SITWELL, to me known, and acknowledged the Release set out above as his/~~her~~act and deed, after same was read by me to him/~~her~~ and he/she then and there stated that he/~~she~~ fully understood said Release and that by his/~~her~~ signature thereto all matters therein set out are compromised and settled in consideration of the payment therein recited.

/s/ Rebecca H. McCauley

[Filed November 24, 1969]

### VERDICT

This cause having come on for hearing on the 20th day of November, 1969, before the Court and a jury of good and lawful persons of this district, to wit:

- |                       |                           |
|-----------------------|---------------------------|
| 1. Clinzo B. Sanders  | 7. Charles C. Huntley     |
| 2. Betty J. Davis     | 8. Florine P. Hunter      |
| 3. Iris S. Brown      | 9. Dorothy A. Teko        |
| 4. Gladys Cooper      | 10. Inez B. James         |
| 5. Donald G. Anderson | 11. Eugene Dickerson, Jr. |
| 6. John N. Jenifer    | 12. Mary E. Bradley       |

who, after having been duly sworn to well and truly try the issue as to the scope of the Release between PHRONISIE IRENE MARSHA SITWELL, plaintiff and THE GEORGE WASHINGTON UNIVERSITY, D/b/a The George Washington University Hospital and DR. BRIAN BLADES, defendants, and after this cause is heard and given to the jury in charge, they upon their oath say this 24th day of November, 1969, that they find the issue aforesaid in favor of the plaintiff.

ROBERT M. STEARNS, Clerk

/s/ By Sophie Lyman

Deputy Clerk

JUDGE RICHMOND B. KEECH, Presiding

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[Filed December 4, 1969]

**MOTION FOR JUDGMENT N.O.V.  
AND/OR FOR A NEW TRIAL**

Come now the Defendants, George Washington University Hospital and Dr. Brian Blades and move the Court to enter judgment notwithstanding the verdict of the jury and/or to grant a new trial as to the jury verdict limited to the scope of the release and as reasons therefor state as follows:

1. The verdict is contrary to law.
2. There was no genuine issue of fact for submission to the jury and the Court should now enter judgment in favor of the Defendants as a matter of law.
3. The verdict was contrary to the weight of the evidence.
4. And for such other reasons as will be urged on a hearing on this motion.

WHEREFORE, it is respectfully submitted, the Court should enter its Order setting aside the verdict of the jury and entering judgment for the Defendants on the scope of the release and/or grant a new trial as to the scope of the release.

**GALIER, STEWARD & CLARKE**

/s/ By William E. Stewart, Jr.  
Attorneys for G.W. Univ.  
1215 - 19th Street, N.W.  
Washington, D.C. 20036

**WELCH, DAILY AND WELCH**

/s/ By Walter J. Murphy, Jr.  
Attorneys for Dr. Brian Blades  
1511 K Street, N.W.  
Washington, D.C. 20005

[Filed December 22, 1969]

# ORDER

Upon consideration of the Motion of the Defendants, George Washington University Hospital and Dr. Brian Blades, for judgment n.o.v. and/or to grant a new trial as to the jury verdict limited to the scope of the release, the points and authorities in support thereof, the memoranda of the Plaintiff in opposition thereto, the exhibits in evidence before the Court, including the records of this Court as to which judicial notice was taken and after oral argument by counsel in open Court, it is by the Court this 22nd day of December, 1969,

ORDERED, that the motion of the Defendants for judgment n.o.v. as to the scope of the release be and hereby is granted, and it is further,

ORDERED, that judgment in favor of the Defendants be and hereby is entered in this cause, and it is further

BY THE COURT:

/s/ R. B. Keech  
J U D G E

[Certificate of Service]

[Filed December 30, 1969]

# MOTION TO RE-CONSIDER

DEFENDANTS' MOTION FOR JUDGMENT N.O.V. etc.  
AND THE GRANT THEREOF.

Comes now the plaintiff in the above action, by and through counsel of record, and recalling to the Court that on December 22, 1969 it signed

ORDERED in the alternative that the motion for a new trial be and is hereby granted, for the reason that the jury failed to follow instructions of the court, but that there be such new trial only in the event that judgment n.o.v. in favor of the defendants be reversed on appeal, /s/ R.B.K.

Considered and denied  
RBK 1/12/70

[Filed, January 12, 1970]

an Order granting the defendants' Motion for Judgment n.o.v. herein, and entering judgment for the defendants as a matter of law, and in the alternative granting defendants' motion for new trial "for the reason that the jury failed to follow instructions of the court"; and bearing in mind that the Court relied heavily upon Maryland law in making its decision on said motions of the defendants, particularly upon the cases of — *TRIESCHMAN v. EATON*, 224 Md. 111, 166 A.2d 892 (1961) and *PEMROCK, Inc. v. ESSCO CO.*, 252 Md. 374, 249 A.2d 711 (1969), respectfully moves this Honorable Court to re-consider its rulings on said motions, and thereafter to overrule and deny both such motions, for the reason that the Maryland Court of Appeals, just as late as December 9, 1969, in the case of — *EDNA ARLENE KYTE, Infant, et al vs. RODNEY K. McMILLION*, No. 75, September Term, 1969, (not yet officially reported), reversed the trial court and ordered judgment for the plaintiff in the amount of \$15,000.00, in an analogous situation in reverse.

*Kyte v. McMillion, supra*, was apparently unknown to counsel for either side in this litigation, until it came to the attention of plaintiff's counsel on December 24, 1969, through the "Complete Law Week Summary" of the Bureau of National Affairs, whereupon he called Annapolis to verify the number and title of said case, and to order copy thereof. Same having been now received, plaintiff attaches hereto a verbatim copy of the opinion of the Maryland Court of Appeals in *Kyte, supra*, as written by Judge McWilliams for a unanimous court.

In *Kyte, supra*, plaintiff had first sued a hospital and nurse for a wrongful blood transfusion, following a motor vehicle accident. That case was settled, after trial (while the jury was deliberating), for \$15,000.00, with the usual "release", specifically releasing the "Union Memorial Hospital, Inc., and Ellen E. Ossman and their representatives and any and ALL OTHER PERSONS, FIRMS, PARTNERSHIPS AND CORPORATIONS which are or might be claimed to be liable to me from all claims and demands of whatever nature, actions and causes of actions, damages, costs, etc." Suit was then filed against the motorist (the primary tort feisor), who plead the release as a defense



(although he was not mentioned therein). The trial judge granted summary judgment for the motorist, and on appeal, the Maryland Court of Appeals REVERSED, specifically holding, "it would seem to follow that the hospital's infusion of the wrong type blood into Edna's veins and McMillion's breaking of her bones can hardly be said to be the "same injury". But even if we reject the notion that the negligent transfusion was not a part of nor a continuation of the same injury, the judgment below ought to be overturned for other reasons."

Respectfully submitted,

/s/ Earl H. Davis,  
Of counsel for Plaintiff,  
810-18th Street, N.W.  
Washington, D.C. 20006.

[Certificate of Service]

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[Filed January 21, 1970]

#### NOTICE OF APPEAL

Notice is hereby given that Phronsie Irene Marshal Sitwell, plaintiff above named, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the Order entered in this action on December 22, 1969 granting the motion of the defendants for judgment n.o.v. as to the scope of release and alternatively granting the defendants' motion for new trial "only in the event that judgment n.o.v. in favor of the defendants be reversed on appeal"; and from the Order entered herein on January 12, 1970 denying plaintiff's Motion to Reconsider the granting of the defendants' Motion for judgment n.o.v. etc.

/s/ Earl H. Davis

**COUNSEL TO BE NOTIFIED:**

WILLIAM E. STEWART, Jr., Esq.,  
 Galiher, Stewart & Clarke,  
*Attorneys for George Washington*  
*University, etc.,*  
 1215 - 19th Street, N.W.  
 Washington, D.C. 20036

and

WALTER J. MURPHY, Jr., Esq.,  
 Welch, Daily & Welch,  
*Attorneys for Dr. Brian B. Blades,*  
*Investment Building,*  
 1511 K Street, N.W.  
 Washington, D.C. 20005.

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**EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS**

\* \* \* \* \*

Washington, D.C.

Thursday, November 20, 1969

The above-entitled cause came on for trial before THE HONORABLE  
 RICHMOND B. KEECH, United States District Judge, and a jury, commencing  
 at 11:50 A.M.

\* \* \* \* \*

2

**PROCEEDINGS**

\* \* \* \* \*

- 11        **THE COURT:** It is my understanding then that the two defendants,  
 George Washington University Hospital and Dr. Brian Blades, offer the release  
 in this case, which has been stipulated to by counsel as being the release,  
 which is a subject of this litigation. It is meant by that, of course, that the  
 document is, in fact, the document which was executed by the parties

reserving any legal effects of the document insofar as the procedure involved.

That will be indicated as Defendant's Exhibit Number One. Is that agreeable?

MR. STEWART: Yes, Your Honor.

MR. DAVIS: All right.

\* \* \* \* \*

- 12 MR. STEWART: Your Honor, I offer into evidence, under the double certificate of the Federal District Court in Baltimore, the complaint filed in the action, Civil Action Number 15041, styled *Phronsie I. M. Sitwell, Bedford, Virginia, versus Paramount Construction Company, Inc. Baltimore County, Maryland.*

\* \* \* \* \*

- 13 THE COURT: Without objection, it will be in evidence.

\* \* \* \* \*

MR. STEWART: I next offer the amended complaint filed in the same civil action number in the Federal District Court in Baltimore.

THE COURT: Without objection, it is received.

THE DEPUTY CLERK: Defendant's Exhibit Number Three marked into evidence.

MR. STEWART: Next, I offer a set of written interrogations filed by Paramount Construction Company and addressed to the plaintiff, Phronsie I.M. Sitwell, in the same action, under the same double certificate of the Court.

THE COURT: Without objection, it is received.

THE DEPUTY CLERK: Defendant's Exhibit Number Four marked into evidence.

MR. STEWART: Next, I offer the answers of plaintiff Mrs. Sitwell to the previously mentioned written interrogatories.

THE COURT: Without objection, it is received.

THE DEPUTY CLERK: Defendant's Exhibit Number Five marked into evidence.

MR. STEWART: Next, I offer a copy of a motion to require further answers to interrogatories and the order of the Court granting that motion.

14 THE COURT: Without objection, it is received.

THE DEPUTY CLERK: Defendant's Exhibit Number Six marked into evidence.

MR. STEWART: Next, I offer the pleading entitled "Further Answers to Written Interrogatories," executed by Mrs. Sitwell.

THE COURT: Without objection, it is received.

THE DEPUTY CLERK: Defendant's Exhibit Number Seven marked into evidence.

\* \* \* \* \*

15 MR. STEWART: May I, at this point, interrupt my offered evidence and read from the document?

THE COURT: Yes, sir. And may I ask you to identify them as you do so read them; and read them slow enough so we can follow you, please, sir.

MR. STEWART: Yes, Your Honor.

MR. STEWART: I am reading now from Defendant's Exhibit Number Two, which is a copy of the complaint filed in the United States District Court of Maryland, in the Civil Action 15041, entitled Phronsie I. M. Sitwell, Bedford, Virginia, versus Paramount Construction Company.

"1. The Plaintiff is a citizen of the State of Virginia. The Defendant, Paramount Construction Company, Inc. is a corporation incorporated under the laws of the State of Maryland.

That on October 31, 1960, the Plaintiff was driving her Dodge automobile along a detour between Seventeenth Street, Northwest, and Mount Olivet Road, Northwest, in the District of Columbia, in a northwesterly direction, approaching Bladensburg Road. The area near the intersection of Bladensburg Road and Mount Olivet Road was at the time an area of road construction where work was being performed by the Defendant under a contract between said Defendant and the District of Columbia and the Defendant was in control of said

16 area at the time of the happening of the matters and facts complained of herein.

That at said intersection there was a concrete island, approximately sixteen to twenty inches high, which said concrete island was not visible to the

Plaintiff because the same was not marked or lighted in any way; and Plaintiff's automobile, in traversing the detour road in the construction area, struck the said island and mounted and straddled the same."

Paragraph Number Five [5].

"That as a result of the negligence of the Defendant, its agents, servants, and employees, as herein above set out, the Plaintiff sustained and suffered the following injuries and damages:

a. She received severe, painful, and permanent injuries which caused and still cause her great physical pain, mental anguish, and emotional disturbance; that by reason of her said injuries; she required hospitalization and surgical, medical, and psychiatric care and attention; that among her said injuries was a hiatal hernia, which required her to undergo several operations and may require her to undergo another operation.

b. She has been forced to spend substantial sums of money for hospital, medical, surgical, and psychiatric care and attention in consequence of her  
17 said injuries and will in the future be required to continue to expend substantial sums for medical and surgical care.

c. She has been unable to perform her usual and normal household duties and has required and will in the future be required to obtain assistance at substantial monetary expense.

d. She has been unable to return to her former employment as a teacher in the District of Columbia public schools, and, thereby, she has lost and been deprived of the earnings which she would otherwise have had.

e. Her automobile was damaged beyond repair, whereby she lost the whole value thereof."

This complaint was signed by Leon H. A. Pierson and Arthur S. Curtis; Mr. Pearson of Baltimore, Maryland, and Mr. Arthur Curtis of Washington, who signed it as attorneys for Mrs. Sitwell. And this complaint was filed in the United States District Court in Baltimore on October 7, 1963.

Thereafter, on the date of April 14, 1964, an amended complaint was filed in the Federal District Court in Baltimore.

[Mr. Stewart looks through amended complaint.]

MR. STEWART: I find no change in that portion as previously read,  
Your Honor.

MR. STEWART: Under date of December 17, 1964, the defendant,  
18 Paramount Construction Company, filed a set of written interrogatories in  
the United States District Court for Maryland, addressed to Mrs. Sitwell, for  
her to answer under oath.

With the permission of the Court, I will treat these interrogatories and  
the answers back and forth so that they will make sense.

THE COURT: I think it might be helpful, and will you give us the  
number as you do. It might help the reporter and the Court, too.

MR. STEWART: Yes, sir.

MR. STEWART: [Reading from set of written interrogatories and  
answers:]

"Number 1: Did Plaintiff sustain an accident during the month of  
December, 1960?"

Answer: "Yes. The Plaintiff did sustain two accidents in December,  
1960."

Question: "2. If the answer to the foregoing interrogatory is 'yes,' state  
when and where said accident occurred and the name and names of physicians  
and hospitals by whom and at which plaintiff was treated for said accident."

Answer: "Presumably, as a result of the accident on October 31, 1960,  
I developed a very annoying and uncomfortable type of vertigo, which made  
moving about less sure. Each time I would take a step, I would get a jolt  
19 which I felt specifically in my head.

The two accidents, one on December 13 and the other on December 16,  
1960, could both be attributed to this lack of sureness in standing erect or  
being sure of my footing. Each time I would put my foot down in walking,  
I jarred my head and made for greater discomfort. It was extremely difficult  
to remain in my teaching situation, but it was so near the Christmas holiday  
season that I attempted to do it.



The December accident occurred in the Anacostia High School, Sixteenth and R Streets, Southeast, Washington, D.C. The accident was reported in writing to the principal of the high school, Mr. E. G. Griffith, the very next day.

The information was handed in person to Mrs. Margaret Cook, the administrative assistant, whose responsibility it is to give such information to the principal. Apparently, he did not think the accident of enough consequence to report it to the Compensation Commission as is the custom.

The specific accident concerned the fall over some books and a rather large pocketbook. I could have been tripped, but I do not know of any reason therefore because, so far as I know, I did have the good will of my students. Frank Guiabo was a witness to this accident. His statement is in the files of the Compensation Commission.

At that particular time, I had to move from room to room for my teaching duties — up one flight of stairs at one time and down it another time.

20 Then, on December 16, as a result of the continuous vertigo in this instance (a combination of dizziness and whirling and ice under foot) I fell at a bus stop, further injuring my elbow, which had been injured originally in the fall at the Anacostia High School.

I suffered recurring heavy vertigo attacks after each fall. As a result of striking my elbow, an infection set in; and by the latter part of December, 1960, when I was in Bedford with my son for the Christmas holidays, I had developed a cellulitis condition, which hospitalized me for approximately ten days.

At that time, too, my chest was giving me considerable trouble. The pain was a gnawing and persistent pain. I was not able to return to my teaching duties until January 16, 1961. At the time, my elbow and arm began to swell, and I was utterly miserable.

Miss Beatrice Shook, a registered nurse, who lives at Three Otters Estate, RFD 2, Bedford, Virginia, called in Dr. Freeman Jenrette who suggested immediate hospitalization in the Bedford Memorial Hospital after taking one look

at my elbow and me. I wanted to go back to my teaching duties the second week after school opened but was not well or strong enough to do so and had to ask for the extra week off.

21 There was not immediate hospitalization in connection with either the school accident or the fall on the ice, but both contributed to a condition, which later hospitalized me for the cellulitis condition; but the accident on October 31, 1960, was a contributing factor in that I could not move about with sureness or confidence.

Vertigo, I understand, is one aspect of concussion, which may affect a person adversely. I understand it takes approximately two weeks for this condition to develop; but in order for there to be a general blood poisoning, as this was, then the automobile accident on October 31, 1960, could have played a part in a somewhat subtle fashion. I have in mind the bruising and injuring of organs of the body in the October 31, 1960 accident and their general response when the cellulitis condition set in.

I have never felt well since the accident on October 31, 1960. In fact, this feeling of insecurity in my walking and moving about generally has continued with me.

I continued to suffer chest pains and mentioned this fact to Dr. Freeman Jenrette, who had Dr. Thornton of Lynchburg, Virginia, a radiologist, now retired, take some x-rays. As a matter of fact, I went through the G.I. series to determine whether there might be a hernia condition. As I recall, however, the very specific techniques for determining a herniated diaphragm were not employed by Dr. Jenrette and Dr. Thornton; but it was their thinking, as embodied in a report, that the symptoms led them to believe that a hernia condition was present in the diaphragm.

22

I have been told by several radiologists, general physicians, and chest surgeons that diaphragmatic hernia conditions do not always show up on x-rays. As a matter of fact, the two times that I was operated on at George Washington University Hospital for such a condition, there was no evidence on the x-ray film, though the condition was a sure one.

I was told by Dr. Atkins had I not had the operation, I would have run into serious trouble soon because the hole in the diaphragm was widening."

Question 3. "Did the Plaintiff consult or obtain treatment from any doctors or by any hospitals from October 31, 1960, until her accident in December, 1960, for injuries alleged to have been sustained in said accident of October 31, 1960?"

Answer: "I am endeavoring to secure bonafide information regarding my having consulted physicians between October 31, 1960, and December 13, 1960. I feel confident I did, but at the moment I am not sure."

THE COURT: Would you let me interrupt you so I have those dates again, please, sir.

\* \* \* \* \*

24 THE COURT: Now, Mr. Stewart, I interrupted you. Maybe you had better go back and give the jury the benefit of the continuity.

25 MR. STEWART: Very well, sir.

The question, which is number 3, reads: "Did the plaintiff consult or obtain treatment from any doctors or by any hospitals from October 31, 1960, until her accident in December, 1960, for injuries alleged to have been sustained in said accident of October 31, 1960?"

Answer: "I am endeavoring to secure bonafide information regarding my having consulted physicians between October 31, 1960, and December 13, 1960. I feel confident that I did, but at the moment I am not sure.

I attempted to get the full breakdown from the Aetna Insurance Company, the firm carrying my Government Insurance, and was told that the Civil Service had ordered the destruction of the records for 1960-61. However, it is my belief that I consulted Dr. Charles H. Wolohon in his office on Fifth Street, Northwest, located then not too far from the Coolidge High School, for the pain in my chest which I thought to be heart pain. I was definitely worried. I was having trouble breathing, had a tendency towards nausea and vomiting, and, in order to sleep at all, had to sleep on at least three pillows or double over the second one.

at my elbow and me. I wanted to go back to my teaching duties the second week after school opened but was not well or strong enough to do so and had to ask for the extra week off.

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Answer: "I am endeavoring to secure bonafide information regarding my having consulted physicians between October 31, 1960, and December 13, 1960. I feel confident that I did, but at the moment I am not sure.

I attempted to get the full breakdown from the Aetna Insurance Company, the firm carrying my Government Insurance, and was told that the Civil Service had ordered the destruction of the records for 1960-61. However, it is my belief that I consulted Dr. Charles H. Wolohon in his office on Fifth Street, Northwest, located then not too far from the Coolidge High School, for the pain in my chest which I thought to be heart pain. I was definitely worried. I was having trouble breathing, had a tendency towards nausea and vomiting, and, in order to sleep at all, had to sleep on at least three pillows or double over the second one.



It is very likely that I saw Dr. Richard Clapp at the Washington Sanitarium and Hospital, located in Tacoma Park, D.C.-Maryland, because his office hours were arranged so that he could be seen, I believe, on Wednesday evenings. I have written to all of these people to obtain information I need which is wanted.

I have so much pain in my chest I recall asking Dr. Jenrette if one ever had a biopsy made of one's chest to determine precisely what the trouble might be. This was before my return to Washington in January, 1961, after being hospitalized. I don't recall precisely what his reply was, but he assured me that there were tests that might reveal the likelihood of infection, growth, or injury. Even then, as he wrote in a report, he suspected a diaphragmatic hernia."

"4. If the answer to the foregoing interrogatory is 'yes,' state the name and address of each doctor and hospital, whom or at which the plaintiff was so examined or treated, the date of such examination or treatment, between October 31, 1960, and the date of plaintiff's accident in December of 1960."

Answer: "Possibly, Dr. Charles H. Wolohon, 800 Pershing Drive, Silver Spring, Maryland; Dr. Richard H. Clapp (formerly of the Tacoma Park Sanitarium and Hospital, Tacoma Park, D.C.-Maryland.)

"Number 5. "State the amount of charge of each doctor and hospital for services so rendered between October 31, 1960, and the accident in December of 1960."

Answer: "Mr. Arthur Curtis, Attorney-at-Law, National Press Building, Washington, D.C., has a full and complete record of all charges. I shall suggest that he send it over for perusal.

6. "If the Plaintiff claims to have been examined or treated by any doctor or at any hospital after her accident in December, 1960, for injuries alleged to have been sustained by or on October 31, 1960, then state the name of each such doctor of hospital, the approximate date or dates of such examination and treatment, and the amount of the bill of each such doctor and hospital."



Answer: "Dr. Freeman Jenrette, December 27-January 16, 1960-61, Bedford, Virginia. Hospitalized ten days in the Bedford Memorial Hospital for chest pain and cellulitis condition.

(1961) Dr. Richard Clapp, April 10-17, Washington Sanitarium and Hospital, Tacoma Park, D.C.-Maryland. Dr. Clark is now associated with the Zephyr Cove Medical Clinic in Nevada and may be addressed at Zephyr Cove, Nevada.

In connection with the April, 1961, hospitalization, attacks of vertigo continued to assail me along with heavy chest pain. I became quite ill on the train coming from Bedford, Virginia, arriving around 7:40 P.M. Standard Time, I believe, and was carried by ambulance to the Washington Sanitarium and Hospital, where Dr. Clapp looked after me.

- 28 Dr. Richard Clapp, January, 1962, Washington Sanitarium and Hospital, Tacoma Park, D.C.-Maryland. I stayed several days for chest therapy in order to be able to go along with my school work. I was subjected to heavy hot packs and some diathermy, as I recall.

Dr. Brian Blades, Dr. Paul Atkins, Dr. Cushing and Dr. Silva, George Washington University Hospital, Twenty-third Street, Northwest, Washington, D.C.

On February 8, 1962, Dr. Paul Atkins, the surgeon, escophogscopy, and drainage of crico phargens area of the esophagus after a rupture of an esophageal fistula.

There seem to be two or three interpretations of how this festering area came about. Personally, I think it was an accident on the part of Dr. Atkins and his student helpers, perhaps. My throat had to be drained for two weeks so I spent three weeks in the hospital and then returned for a short stay at 1435 Holly Street, Northwest, Washington, D.C.

On February 8, 1962, I entered the hospital for my hernia repair, and the throat difficulty was unexpected. On the other hand, I had been having some trouble with my throat."

\* \* \* \* \*

- 29 MR. STEWART: "On February 8, 1962, I entered the hospital for the

hernia repair and the throat difficulty was unexpected. On the other hand, I had been having some trouble with my throat. It was so very sore at times. I could scarcely swallow. There may have been both a fistula and a rupture. Dr. Herzmark says this fistula could have been the result of the accident on October 31, 1960.

Dr. Brian Blades, Dr. Paul Atkins, Dr. Cushing, Dr. Silva, George Washington University Hospital, Washington, D.C.

May 8, 1962, diaphragmatic hernia repair (I was in the George Washington University Hospital until June 10, 1962.)

May 18, 1962, diaphragmatic hernia repair.

Gastrectomy gangrene developed in stomach area and there had to be a re-section of the stomach.

Gastroectomy.

Dr. Charles H. Wolohon, Tacoma Park Sanitarium and Hospital.

June 10-24, 1962, Staphylococcic infection in the abdomen. The physicians in the George Washington Hospital, George Washington University Hospital, refused to give me the needed antibiotics, and I indicated a great desire to go where I could get the treatment which I needed in order to recover. The

30 George Washington University Hospital discharged me without once giving me the treatment which I needed for this infection; and had I stayed there, it is not unlikely that I might have died.

Dr. W. V. Rucker, Oakwood Hills, Bedford, Virginia; Bedford Memorial Hospital, Bedford, Virginia.

June 25-July 2, 1962 (I spent one day coming via train.)

This was a recuperative period to prepare me for taking up my partial duties at Three Otters Manor House on the Three Otters Estate. Even when I left the hospital, I was extremely weak.

Mr. Arthur Curtis has all of the hospital bills and doctors' bills with the full and accurate amounts. He will have to go through his files to find them, but that is now his responsibility. These were sent to him over a year and a half ago.

In the meanwhile, I shall endeavor to find as many as I can among my own files, but he has the complete record and should release it. I did not keep copies of all the bills, either hospital or doctors', but sent them on to him for his use in pursuing the case.

I might say that to date an amount well in excess of \$10,000 has been spent on hospital bills, nurses's bills, doctors' bills, therapy bills, ad infinitum."

31 This is question Number 7: "Name all experts whom you propose to call as witnesses."

Answer: "They are as follows:

1. Miss Beatrice Lillian Shook, RN 14227,  
State of Virginia, RFD 2, Bedford, Virginia.
2. Dr. Paul Adkins, George Washington University Hospital, Washington,  
D.C.  
Surgeon on esophagus.
3. Dr. Brian Blades, George Washington University Hospital, Washington,  
D.C.  
Chief surgeon in connection with hiatal hernia repair.
4. Dr. Cushing  
General surgeon, George Washington University Hospital, Washington,  
D.C.
5. Dr. Charles Wolohon, internist, Washington Sanitarium and Hospital,  
800 Pershing Drive, Silver Spring, Maryland.
6. Dr. Kennon C. Walden, Surgeon, Main Street, Bedford, Virginia.
7. Dr. Richard Clapp, Zephyr Cove Clinic,  
Zephyr Cove, Nevada.
8. Dr. Maurice Herzmark, 1616 Eighteenth Street, Northwest, Washing-  
ton, D.C.  
orthopaedist.
- 32 9. Dr. Henry A. Monat, 1028 Connecticut Avenue, Northwest, Washing-  
ton, D.C.  
gastroenterologist.

10. Dr. Irving Scherlis, 2 Read Street, Baltimore, Maryland.  
urologist

11. Miss Olive Keys, 1435 Holly Street, N.W., Washington, D.C.  
Attorney-at-Law

12. Dr. W. V. Rucker, general practitioner, Oakwood Hills, Bedford,  
Virginia."

Question number 8: "Requested copies of reports to be attached and these  
are not attached to this document.

MR. DAVIS: You overlooked Dr. Enslin.

MR. STEWART: Pardon me?

MR. DAVIS: You overlooked Dr. Enslin as one of the experts Plaintiff  
expects to call.

MR. STEWART: Oh, yes. One additional expert listed was Dr. J.D.M.  
Enslin of Danville, Virginia.

Thank you, Mr. Davis.

Number 9. "State with precision the nature and location of bodily in-  
juries suffered by you."

Answer: "Inasmuch as soft tissue is involved, there are thousands upon  
thousands of ways in which one may be hurt physically in such an accident  
as I experienced on October 31, 1960. Even expert physicians, using all of  
33 the technological tests at hand, cannot state with precision the nature  
and location of bodily injuries suffered by me. They do know, because they  
know something about the law of cause and effect that the pressure on the  
chest was terrific when I struck the steering wheel, and my head hit the top  
of the car.

a. They know, as I do, that the whole body suffers from shock,  
some parts more than others, depending upon the velocity, and  
that when a person's head is struck hard enough that sometimes  
a concussion results or that aspects of concussions are apparent  
for quite some time.

b. It is my understanding that the heavy vertigo attacks to which I

was subject for almost three years, in somewhat diminishing degree, as time went on, could have been due to a concussion and certainly could have made for the unbalance I experienced and still experience, to some degree. The heavy and almost unbearable heavy headaches I still have could be residuals of the accident, plus the operations.

- c. The most definite pain from the time of the accident up until the present time is the pain under the left rib cage, to the left of the sternum. It was after this accident that I had trouble with my breathing, coughed a great deal, felt nauseated and had to sleep on several pillows in order to be comfortable at all.
- d. Dr. H.A. Monat thinks the embarrassing flatus to which I am subject is due to the residuals of the operation.
- e. The abdominal spasms for which Dr. Monat is treating me are due, in large part, to the recurrence of the hernia condition and to my having lost a portion of my stomach during the May 18, 1962 operation at the George Washington University Hospital. Sometimes I have the most horrible abdominal attacks still, to such an extent that if I am having a meal, I must leave the table and leave my meal unfinished and lie down.
- f. There is some possibility of injury to the bladder and kidneys. Further examinations have been recommended, that is, veining of the organs and a cystoscopy examination.
- g. The ribs on the left side are flaring and appear somewhat abnormal.
- h. The stomach is still quite high under the left diaphragm. This is evident in all x-rays which have been made since the operations in May of 1962.
- i. There is evident through x-rays, as well as via sight, scoliosis of the spine.
- j. My right leg and right arm have never been as strong or alive as they were before the accident. Much pain and some numbness were apparent then — more so now. The force of being rocked back and

forth suddenly and thrown to the ceiling of the car strained soft tissue and pulled nerves and muscles."

Question 10: "State which of said injuries, if any, are permanent.

Answer:

- "a. Residuals of the operations which have lasted more than two years include the flatus and the belching, and abdominal spasms, which worsened when there was a recurrence of the diaphragmatic hernia condition.
- b. The need to guard the diet with great care (general limitation of what can be eaten and digested with any degree of comfort because of the resection of the stomach, the spasms and the chest pain.
- c. Inasmuch as respiration and pulse were absent for a period of time after I was pushed from the bed, with the idea of forcing me to get up and walk, and I fell over a table, there is some possible brain damage connected with immediate memory. I have been surprised that I could not remember, at times, the reason for some trip to another room and would have to go back to the original room to recall why I went to the second one. Also, when writing, instead of thinking of the word itself and how it is normally spelled, I find I spell the word the way it sounds, writing words which have no meaning in the context of the sentence or the circumstances involved. I have always been able to spell well and this bothers me. I can't think that this is something that normally happens to a fifty-three year old person, especially one who anticipates, at the time, at least seventeen years more of creative work in the field of education and literature.
- d. As a result of this possible brain damage, I cannot think or move as quickly as I once did before this accident.
- e. I am not sure of my footing when walking and frequently bump into furniture or door facings because I misjudge my movements.
- f. I have a tendency to favor the left side because that is the side on



which there has been and is the most pronounced pain.

37

g. My spine in the cervical and lumbar areas is almost always full of pain, except when medication has been administered. Cortisone and novocaine help some, especially the former. I have an injection about every six weeks or two months.

h. There are continuing vitamin injections to keep my stomach up; massages to allay some of the pain in the spine. These help me feel better, at time, and give me more mobility.

i. Kidneys and bladder. The pressure is very noticeable, as if something were there pressing against them.

j. It is becoming more and more difficult to achieve bowel movements without the aid of drugs."

Number 11. "If you have any complaints on account of injuries received in the occurrence, state in detail the nature of such present complaints."

Answer: "I should like to think that none of the injuries I sustained is permanent, but I am sure this is wishful thinking. It would make me very happy, indeed, could I recover completely. I am still trying, despite the fact that there are days when I am so full of pain I have to stay abed more than half the day.

38

The answers given to the previous question, I believe, cover this No. 11, in that it is almost impossible to separate injured areas from complaints because the two are so much interrelated. Where there is an injury creating pain one feels it and is aware of it whether openly complaining of it or not."

Number 12. "If you contend that a previous injury or condition was aggravated by the occurrence, describe such condition, and give the names and addresses of physicians who treated you therefor, and the approximate dates of such treatments."

Answer: "I don't know that a previous injury or condition was aggravated by the accident on October 31, 1960. It is my opinion and that of several physicians that the hernia condition was created by the accident inasmuch as I had not had definite symptoms before this time.

However, it is not impossible for anyone, as I understand it medically to have a diaphragmatic hernia in mild form and that later, if there is tremendous pressure exerted on the chest wall as was true when I was thrown against the steering wheel of my car, there is additional pulling and tearing to the degree that one could speak of an 'aggravation' rather than a 'creation.'

I do not know the definite circumstances in relationship to my condition because physicians have written and said that either could be true. On the other hand a diaphragmatic hernia the width of three male fingers would indicate a tearing action, it would seem.

It might be well to consider the following:

Assuming that the relative velocity between steering wheel and body was 10 miles per hour (14.6 feet/seconds) at impact and that the body slowed to the same velocity as the steering wheel in six inches of travel, with respect to the steering wheel, after impact with the steering wheel, and also assuming that sixty percent of the body mass was effectively centered at the impact area, it can be shown that the average force on the impact area of the body during impact was approximately 700 pounds.

Seven hundred pounds can exert extraordinary pressure against bones, muscles, nerves and soft tissue.

Question Number 13. "Itemize the expenses paid or incurred by you as a result of the accident on October 31, 1960."

Answer: "Mr. Arthur Curtis has all of the bills, records, documents, etc., which he could use for an itemization of expenses paid or incurred by me as a result of the accident on October 31, 1960. I turned them over to him as they came in to me and did not keep photostatic copies. He probably already has a compilation. I should say, perhaps, the sum total of expenses which would relate to this accident would be in the neighborhood of some eight thousand dollars. The amount could be considerably more."

14. "If the claimant claims to have lost any salary as a result of the

accident of October 31, 1960, state the period during which she claims to have lost salary as a result of said accident and the name of her employer, and the total amount of such lost salary."

Answer: "Again, I shall have to defer to Mr. Arthur Curtis, Attorney, whose offices are located in the National Press Building, Washington, D.C. He asked for and achieved affidavits from the Assistant Superintendent of Schools as to the salary for given years. With this information in hand, he should be able to say very swiftly or in writing just what the losses might be.

I should like to call attention to the fact that had I not been hurt, I could have worked during a portion of the summers and thus added, perhaps, a couple of thousand dollars to my income each year.

My present salary annually, on the basis of a ten months' teaching term, would be \$10,500."

Then there appears the signature of Phronsie Irene Marsh Sitwell. Then, the notarization of this signature and acknowledgement of the answers was before a notary, Rebecca H. McCauley.

These questions — rather, these answers of Mrs. Sitwell were filed in the Federal District Court in Baltimore on January 14, 1965. I find no specific  
41 date of execution on it.

\* \* \* \* \*

43 THE COURT: Ladies and gentlemen, counsel, as they frequently do, have agreed that Mr. Stewart be interrupted at this time so that a witness, Mr. Curtis, may be called now with the understanding that he is to leave town and the further understanding, that if it becomes necessary for Mr. Curtis to return, that will be done.

\* \* \* \* \*

ARTHUR S. CURTIS

called as a witness by the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. State your full name to the Court and the jury, please. A. My .

name is Arthur S. Curtis.

\* \* \* \* \*

Q. What is your occupation? A. I am an attorney.

Q. Are you a member of the Bar of the District Court of the District of Columbia? A. Yes, sir, I am.

Q. How long have you been a member of this Bar? A. I have been a member of this Bar since the year 1958.

\* \* \* \* \*

Q. Mr. Curtis, did you have occasion to represent Mrs. Phronsie I. M. Sitwell, the lady seated at the plaintiff's table here? A. Yes.

Q. In connection with a motor vehicle accident of October 31, 1960? A. Yes, sir.

Q. In the course of investigating that matter, did you file or did you have filed a civil action in the U.S. District Court of the District of Maryland under Civil Action Number 15041, entitled Phronsie I. M. Sitwell, plaintiff, versus Paramount Construction Company, Inc.? A. Yes, sir, I did.

45 Q. Now, when that was filed, Mr. Curtis, were you a member of the Maryland Bar? A. No, sir, I was not.

Q. Are you a member of the Maryland Bar now? A. No, I am not.

Q. And to enable this suit to be filed, did you associate with a member of the Maryland Bar? A. Yes, sir. I associated with Leon Pierson, who was the United States District Attorney for the District of Maryland; and he was then — he had just left the office of U.S. District Attorney and he handled the case.

Q. Now, Mr. Curtis, was that case ever culminated by trial on the merits? A. No, it was never culminated by trial on the merits.

Q. After the pendency of the suit, the complaint — the amended complaint, followed by certain interrogatories and the answers to the interrogatories, was the case ultimately disposed then by settlement? A. Yes, sir. We settled that case in the office of the defense lawyer at a time when I was present, Mr. Pierson was present, Mrs. Sitwell was present, and the defense lawyer was present.

Q. And the defense lawyer was Mr. Paul F. Due, D-u-e, was it not?

46 A. Yes.

Q. Of Baltimore, Maryland? A. Yes, sir.

Q. Now, pursuant to the — what figure was that case settled for?

A. Well, we settled that case for \$1500.

Q. Now, Mr. Curtis, I show you what has been received in evidence as Defendant's Exhibit Number one, a release signed by Phronsie I. M. Sitwell on February 2, 1966. A. Yes.

Q. Is that the release which ultimately disposed of this settlement?

A. I would say no. I would say that the release that disposed of the settlement was an agreement of settlement which was made in the office between Mr. Pierson, Mr. Due — when Mrs. Sitwell was present and when I was present; and the paper that we signed at that time, which, unfortunately, I don't have a copy of because I was not the trial lawyer in the case that disposed of the issue.

This was something that came along afterwards by way of supplementing the agreement of settlement.

Q. Mr. Curtis, did you know at the time this Baltimore case was disposed of in February of 1966 that Mrs. Sitwell had pending in this Court the present mal-practice action against George Washington University Hospital and

47 Dr. Brian Blades, Civil Action Number 1176-65? A. Yes, sir, I did.

Q. Did you have any conversation with Mrs. Sitwell relative to the mal-practice case and any effect it may have by execution of this release?

A. My impression . . .

MR. STEWART: I object.

THE WITNESS: My recollection . . .

MR. STEWART: I object to any conversation between Mr. Curtis and Mrs. Sitwell as being hearsay, not in the presence of the defendants here.

MR. DAVIS: It goes to bear on the question of intention, if Your Honor please.

THE COURT: Suppose you come to the bench.

## [AT THE BENCH:]

MR. DAVIS: That goes to the execution of the release being approximately nine months after the pendency of suit when the subject was brought up. I think the attorney had advised his client whether he discussed the matter as to what the signing of the release may have on the pending case and perfectly proper and bearing on the question of the plaintiff's intention, when he did ultimately — when she did ultimately execute this release. The sole issue of the case is her intention.

48 THE COURT: What were you going to say, Mr. Stewart?

MR. STEWART: I feel it is hearsay, Your Honor, and we are dealing with the document, which speaks for itself.

THE COURT: The first thing that occurred to me is: Is the document clear enough or ambiguous or is it susceptible to interpretation which would make for the admissibility of parol evidence. I have not read the document.

MR. DAVIS: I think the — in the Rudick case, if Your Honor please, the same thing is expressed in perhaps even stronger language. The release in the Rudick case is much stronger.

THE COURT: That is not what I am saying, sir, unless you are implying that in the case to which you referred such terminology was construed to be ambiguous as opposed to the legal effect. I think they are two different things.

MR. DAVIS: I think that, as a member of the Bar in this jurisdiction, he was advising the client, when the subject was specifically raised, what effect, if any, will the signing of this release have on pending mal-practice case. He advised it has no effect because the only release he needed in his case concerned Paramount Construction Company and the District of Columbia. Dr. Brian Blades and George Washington Hospital were not even mentioned in it.

49 THE COURT: I don't know that this in and of itself would be sufficient not to encompass Dr. Blades or George Washington Hospital. I think you said the release was that clear?

MR. STEWART: Yes, Your Honor.



THE COURT: Do you, Mr. Stewart, or you, Mr. Murphy, have any authority on this?

MR. STEWART: I have one of these cases I referred Your Honor to. May I get it?

THE COURT: Certainly.

[Mr. Stewart leaves the bench to get his papers and returns to the bench.]

THE COURT: Is there any analogy in this case to what appears in criminal cases; namely, as to state of mind, admitting that to reflect state of mind but not to truth of the content thereof. Is there any analogy to that?

MR. STEWART: I don't think so, Your Honor. In a recent case — there is a recent case of *Randolph versus Ottenstein*. Randolph was the plaintiff in this case and the Court of Appeals indicated that under those circumstances, where there was no evidence tendered or offered under pressure for inducement for the execution of the release, that under those circumstances, the fact that there might have been some different physical injuries involved would not invalidate the release. The attempted interpretation of the testimony by that plaintiff as to what he understood at the time was not permitted after the contention of court order inducement.

THE COURT: Do either of you gentlemen have anything to the contrary?

MR. DAVIS: Yes, Your Honor. I am familiar with the *Randolph versus Ottenstein* case. This is a case where a release between the parties themselves of the suit was attempted to be set aside on the grounds of mutual statement of fact. Judge Jones specifically denied the motion for summary judgment based on that. And at the trial Judge Holtzoff interpreted this differently. He felt that could not be mutual statement of fact because the plaintiff in this case was also a lawyer and he settled for property damages. Only some time later he had a ruptured disk come into the picture.

I have set forth all of my authorities in opposition to reopening the pre-trial statement, and I particularly direct Your Honor's attention, the Court's attention, at this time to *McKenna versus Austin*.

THE COURT: I have not had an opportunity to read them thoroughly,

as you know. They were just given to me.

MR. DAVIS: Then I state on June 13, 1969, out of *Young versus State of Alaska*, which was a case involving joint tort-feasors, or, as in this case, successive tort-feasors, in which the Supreme Court of Alaska quoted from the

51 *McKenna versus Austin* in this jurisdiction (this is where one of two joint tort-feasors was released). The Supreme Court of Alaska threw out the release with this language: "We are convinced that the common-law release rule should not be adopted in Alaska."

THE COURT: You are going to something else, with all due respect, Mr. Davis. I did get the chance to glance at one of your papers which you showed me, that being the McKenna case and the Alaska Supreme Court ruling.

Here we are dealing with admissibility of the type that you breached. What do you have on that?

MR. DAVIS: I don't think we are violating the parol evidence rule. We don't deny that this release applies as between the parties to it. That is a valid release. But we do deny that it applies to the parties not mentioned.

I think this evidence we are attempting to get from Mr. Curtis has a bearing upon the plaintiff's intention. I think this evidence we are about to elicit from Mr. Curtis will have a bearing on her intent.

THE COURT: I am asking you if you have any authority which authorizes that.

MR. STEWART: Your Honor, I have this reference. It might not be exactly to the point, but it might be helpful.

One of the D.C. Court of Appeals' decisions that I cited to which the

52 Baltimore matter may be concerned (citation inaudible) said: "Appellant's release on her uncontradicted testimony that she did not intend by citing the release to relinquish her claim . . . but this evidence created at most only a factual question as to the scope of the release.

As to the scope of the release, there was no evidence that the release was procured in any way through fraud or misrepresentation. Indeed, at the time the release was signed, appellant was represented by competent counsel; and if

she intended to preserve her right under the medical part provisions, she should have inserted appropriate language to that effect."

Now, I have anticipated certain testimony from the plaintiff in this case as to what her intent was, which I think she is entitled to say.

THE COURT: She is entitled to say. That is one case in which Mr. Davis can receive such testimony.

MR. STEWART: Right, right. I ascribe to that as proper, but we are going one step further and that is this type of testimony rises no higher than any other hearsay testimony. Simply because it is said to be addressed to it, still does not take it out of the boundary of hearsay.

THE COURT: Have you anything further, Mr. Davis?

MR. DAVIS: I have nothing further than what I have already said.

53 THE COURT: Well, I don't recognize those arguments that you cited as justifying the admission of hearsay evidence under such circumstances; and if that is what you have, I will sustain the objection.

Now, with that, do you have anything further from Mr. Curtis?

MR. DAVIS: We just want to clarify a few points.

THE COURT: And you, Mr. Stewart?

MR. STEWART: Yes, I do think I have a little more from Mr. Curtis.

[END OF THE BENCH CONFERENCE:]

BY MR. DAVIS:

Q. Mr. Curtis, I just want to make sure that I understand your testimony. I believe you said at the time this release was being negotiated in the office of defense counsel, Mr. Due, . . . A. Yes.

Q. . . . the subject of this pending mal-practice case did come into discussion? A. Well, we . . .

MR. STEWART: Objection. That's leading.

THE WITNESS: Well, may I say . . .

THE COURT: Wait a minute, Mr. Curtis. When counsel makes objection, please wait.

54 THE WITNESS: Yes, sir.

THE COURT: Please don't lead the witness. I will let him answer the question, but please don't lead him, counsel. He is competent. Suppose you rephrase the question so I will get it again, please sir.

BY MR. DAVIS:

Q. Mr. Curtis, I want to make sure I understand your testimony. A moment ago when you said this settlement of \$1500 was finalized . . . A. Yes.

Q. . . . in Baltimore. That was in the office of defense counsel?

A. That was in the office of defense counsel, yes, sir.

Q. And in the presence of yourself and Mr. Leon Pierson? A. And Mrs. Sitwell.

Q. And Mrs. Sitwell? A. Yes.

Q. Did I understand you correctly that some question came up at that time concerning any possible effect of the release . . . A. Yes.

Q. . . . of the Paramount case as bearing, if at all, on this D.C. case?

A. Yes, yes.

55 MR. MURPHY: If your Honor, please, that's the same question all over again that you just sustained.

THE COURT: You are getting pretty close to it, Mr. Davis.

BY MR. DAVIS:

Q. Well, what was the consensus of the advice that Mr. Due, Mr. Pierson, and yourself . . .

MR. STEWART: Objection.

THE COURT: I sustain the objection.

MR. DAVIS: . . . as to the effect of that case on this case?

THE COURT: I sustained objection to that.

THE WITNESS: My contention was . . .

THE COURT: No, sir, don't answer the question. I sustained the objection. Do not answer the question.

BY MR. DAVIS:

Q. What advice, if any, did you give to your client at that time?

THE COURT: Mr. Davis, come to the bench.

[AT THE BENCH:]

THE COURT: We are getting very close to doing indirectly — I am being courteous, sir — that which we ruled could not be done directly. Do not encroach, please, sir.

MR. OLENDER: The question asked is what this witness also stated, and that is not hearsay. "What advice, if any, did Curtis give to his client?" What  
56 did he state at that time, not asking for any hearsay response.

THE COURT: Was he at that place?

MR. DAVIS: Yes, the office of the defense counsel.

THE COURT: I heard that, sir, two or three times, however . . .

MR. STEWART: That is not George Washington Hospital counsel. I object to it as such.

MR. OLENDER: That is not hearsay, Your Honor. This man knows what he himself stated. He is stating under oath what he stated in that prior case — and that is to the state of mind of the plaintiff in signing this release. Her signing is based on what her lawyer advised her.

MR. STEWART: Is this man, Mr. Curtis, saying that there was no discussion of the action or possible action against George Washington University Hospital or Dr. Blades at that settlement?

MR. DAVIS: On the contrary, he is saying there was a discussion in the presence of the defense counsel in the Paramount Case, in the presence of a former United States Attorney; and also the question was raised by the plaintiff as to whether the settlement would apply to the pending case in the District. All three lawyers said that it would have no effect. That is what Mr. Curtis will testify to — that as an attorney, he advised her. He said George  
57 Washington University was not mentioned in this release, nor the District of Columbia would apply to that; or, if it would have, I guarantee she would not have signed that thing for any \$1500.

THE COURT: I think there is a difference, gentlemen. What do you have to say to that?

MR. STEWART: It seems to me it is the same thing. It is still to hear-say out of the presence of either of these defendants. George Washington





59      who induced her to sign it, not against innocent persons who simply read the document.

MR. DAVIS: I want to make this clear, if Your Honor please, we make no assertion on this release as to the legal effect on the parties mentioned. The parties signatory to the release — this is a perfectly valid release. As to any legal steps, this is where our dispute comes in.

THE COURT: Yes, but what are you doing to say to the last statement made by Mr. Murphy?

MR. DAVIS: We are not trying to set that release aside for fraud . . .

THE COURT: What he is actually saying is how can this be binding as to the present defendants here, namely George Washington University Hospital and Dr. Blades?

MR. DAVIS: Well, I think you can take judicial notice of the fact that as of 1966, Dr. Blades and George Washington University Hospital were not parties to the Baltimore issue and, obviously, they were not present when that Baltimore case was settled. That, of course, does not ipso facto make it hearsay. We are dealing with intention of plaintiff when executing paper.

THE COURT: Why would it have probative value as to these parties?

MR. DAVIS: Because the release itself, if Your Honor please, concludes — in the first paragraph of the release — “which heretofore have been or which  
60      hereafter may be sustained by me in consequence of an accident on or about October 31, 1960, at or near the intersection at Seventeenth Street, Northwest, and Mount Olivet Road, Northwest, in the District of Columbia.”

A year and a half before the mal-practice occurred — the mal-practice, if Your Honor noticed, spells out the mal-practices against the hospital in some fourteen or fifteen specific respects; and, as against the doctor, the surgeon, in some five or six respects. And one of these respects is leaving foreign objects in the plaintiff's anatomy. That couldn't possibly have resulted from the motor vehicle accident in 1960; two distinct, separate actions altogether.

THE COURT: I don't know if that is going to help us because it could be two distinct actions and still be part if it con      within the four corners of the

release. That would be the only reason for the release relating to other accidents and other parties, some known and some not known.

MR. DAVIS: Mr. Murphy cited a case, Your Honor, this morning out of Maryland. I had a reading during recess. It is a Maryland case. Paul Conley represented the plaintiff and (inaudible) represented the plaintiff also. In that case there was a motor vehicle accident against an uninsured motorist. Suit was filed in Baltimore and agreed settlement amounting to over \$10,000 was entered; and to save that uninsured permit, they entered into stipulation that  
61 he could still continue to drive provided he paid \$40 a month on the \$10,000.

Their judgment, that is not only the release, that the judgment when executed was filed against the doctor for mal-practice. The trial judge, Judge Oppenheimer in Baltimore, took the position advocated by defense counsel and threw the case out on grounds that that judgment automatically released the doctor. However, the Maryland Court of Appeals reversed on Judge Hand's order to his Chief Executive of the Maryland Court of Appeals.

MR. MURPHY: The tort-feasor the Court was speaking of in the Maryland case had not had the satisfaction of forejudgment; so she could go forward against the other tort-feasors because there had been no satisfaction. It had nothing to do with the . . .

MR. DAVIS: I have submitted, Your Honor, a photostatic document of a copy of them, but in *Defense Law Journal* of August of '69, New York cases — I do not make separate mention — one of them frankly going back to the 1940's, in which the defendant in a motor vehicle accident happened to be a physician and surgeon.

THE COURT: Let me say this to you: Sometimes when we try to accommodate people, we get ourselves in trouble. This situation with the jury — if I dismissed them at this time, it may be very dangerous from your point of view, Mr. Davis, if the admission be erroneous.

62 Is there any way that a proffer could be made by you, meaning you and Mr. Olender, as to what this gentleman would say and preserve that for the

record without at this time, using the word respectfully, "polluting" the jury as to something that may be determined not to be admissible?

MR. DAVIS: Yes, I think we can do that if you feel it might affect this jury's judgment; but I will now proffer as an additional proffer that if this witness, Arthur S. Curtis, is permitted to continue with his testimony that he will testify that at the settlement conference he said to the ultimate settlement of this Paramount Construction case the question of its positive effect on pending litigation in the District of Columbia, meaning the case was brought up by the plaintiff here, Mrs. Sitwell, at that time and that not only defense counsel in Paramount Construction case but also Mr. Pierson and Mr. Curtis assured her it would have no effect since Dr. Blades and George Washington University Hospital were not parties to this release and would not affect this action.

With that assurance on the part of three lawyers, the plaintiff did sign that formal release when it was mailed to her by Mr. Pierson, her Baltimore counsel.

MR. STEWART: In addition to the problem which we have spoken to previously, here is a witness now attempting to cloak himself with the knowledge and the possible persuasiveness of two other lawyers who are apparently not going to be called before this Court, namely, Mr. Pierson and Mr. Due. That is an additional danger involved in this situation as to distinguish from his sole . . .

THE COURT: As to those two, it would be hearsay.

MR. STEWART: It certainly would.

THE COURT: What about the limitations to Mr. Curtis without them?

MR. OLENDER: That is the pending question.

THE COURT: Sir?

MR. OLENDER: That is the pending question. It's what Mr. Curtis also advised.

THE COURT: What do you think about that, sir?

MR. MURPHY: I take the position, Your Honor, that what these people said to her to induce her to sign had nothing to do with us. The effect of

that document is all we are here to try. If they induced her to sign this thing by some false statement or mistaken statement, then her problem is with them, not with us.

The legal effect of the written release is to remain if she was improperly induced by someone else to sign it; but if it is in Maryland, I don't think there is any question. There is the Uniform Tort-Feasor Act spelled out in the statute.

64 Now, obviously, if all of these three lawyers told her this did not have the effect of a release, that would be only part of claim she may have for course of action against three lawyers for bad — as a matter of fact, she got bad advice from three men of the law.

MR. DAVIS: It would go to the question of her intent, and I might call attention to *Smith versus Conn*.

THE COURT: I am trying to be practical with your witness here at the present time. I would go along with them as to the two other persons who were there. That would be strictly hearsay; but as to what Mr. Curtis says, namely, that it was discussed and he advised her that it did not legally affect the present defendants.

What is your proffer to that? Can we treat that as what would be testified by Mr. Curtis if permitted as a result of what is now tendered on the face of the record?

MR. STEWART: I am reluctant to do it by stipulation for this reason: If on the basis of authority Your Honor should conclude that this is appropriate testimony, we would want to cross-examine Mr. Curtis on the issue.

MR. DAVIS: That is what my question is. I shouldn't cut you off, of course.

65 THE COURT: I have serious doubt about it, Mr. Davis, the admissibility of it; and I think if I admit it and it not be admissible, it would certainly be of such magnitude the jury would be prejudiced by it and then there would be basis for motion for a mistrial.

I will deny it at this time, sir.

MR. DAVIS: You are going to limit it to Mr. Curtis' advice?

THE COURT: I am going to deny it at this time in toto, sir.

[END OF THE BENCH CONFERENCE:]

MR. DAVIS: Would you mark this, please, as Plaintiff's Exhibit Number One.

THE COURT: I will take judicial notice that that is our own file, Mr. Davis, and you ask the Court to take judicial notice of *Sitwell* against D.C., Civil Action 2634-63, sir.

BY MR. DAVIS:

Q. Mr. Curtis, I show you the official file of this Court on Civil Action 2634-63, a civil action entitled *Sitwell versus District of Columbia*, and ask you if you, as a member of the D.C. Bar, filed that action in this Court.

[Witness looks at the file in question.]

A. Yes, I did.

Q. And did that litigation grown out of this same accident of October 31, 1960, at Seventeenth and Mount Oliver Road, Northwest? A. Yes.

This was the Washington part of the accident. There are two parts.

66 Q. As a result of the settlement of the Baltimore case against the Paramount Construction Company, . . . A. Yes.

Q. . . . was this case that I just handed you also dismissed and dismissed with prejudice? A. Yes, only these two cases were in settlement.

MR. STEWART: Your Honor, I object to that.

THE COURT: The second part of that answer is stricken.

THE WITNESS: The answer is that this case and the Paramount Construction case were settled together in Mr. Due's office at the time that Mrs. Sitwell was there and I was there and Mr. Leon Pierson was there and Mr. Due was there.

BY MR. DAVIS:

Q. In other words, the consideration of \$1500 as expressed in Defendant's Exhibit Number One . . . A. Yes.

Q. . . . disposed of both cases? A. It disposed of *Sitwell versus the*

*District of Columbia* for the accident on Mount Olivet Road — that was the accident in the District of Columbia — and the actions of Paramount Construction Company for whatever harm they did . . .

THE COURT: All right. You have answered the question, sir.

BY MR. DAVIS:

67 Q. All right.

Now, did Doctor Brian Blades or George Washington University contribute any of this \$1500?

MR. STEWART: I object.

THE COURT: I sustain the objection to that, sir.

There is no claim in this instance.

MR. DAVIS: Well, they are claiming the effects of the release, Your Honor.

THE COURT: You will argue legal questions in the absence of the jury, sir. That is something they have nothing to do with. That is a legal question. That is the legal effect of the document. That is for the Court and not for the jury.

MR. DAVIS: You may cross-examine

#### CROSS EXAMINATION — BY MR. STEWART

Q. Mr. Curtis, are you a member of any other bar than the District of Columbia? A. I am a member of the Bar of the Supreme Court of the United States, the Virginia Bar, circuit courts of various states.

Q. What states are you a member? In what states are you a member of the bar? A. I am a member of the Bar of the State of Virginia and  
68 the District of Columbia.

Q. Now, in the State of Virginia, do they have a law known as the Uniform Contribution Act?

\* \* \* \* \*

69 Q. Do you have your file with you, Mr. Curtis, with respect to your representation of Mrs. Sitwell in connection with this matter? A. I don't have it with me, no.



Q. Do you have a file? A. I sent the papers back, either to her then or to Mr. Davis.

Q. You know you sent them to Mr. Davis, don't you? A. I have just given my answer, Mr. Stewart.

Q. Well, I am asking you . . .

70 THE COURT: Did you send it to Mr. Davis?

THE WITNESS: Your Honor, I answered that I . . .

THE COURT: Counsel just asked you a question, sir. Do you have any recollection as to whether you did or did not send it to Mr. Davis?

THE WITNESS: I sent some of the files to Mr. Davis . . .

THE COURT: The papers that we are talking about, sir.

THE WITNESS: The papers in this case, Your Honor?

THE COURT: Were they sent to Mr. Davis?

THE WITNESS: I don't know what papers you are talking about, Your Honor.

BY MR. STEWART:

Q. Well, the papers such as medical reports, hospital records, and pleadings that had been filed. A. In this particular case?

Q. In that case and others. A. I don't recall at this time, the year 1965, what I mailed, Mr. Stewart.

Q. Mr. Curtis . . . A. That was four or five years ago. I've had a hundred cases.

Q. What types of cases? A. All kinds of cases — contract, tort, divorce cases.

71 Q. By "tort," you mean negligence cases, automobile accidents, slips and falls, mal-practice cases? Is that what you mean by "tort" cases? A. I mean by "tort" cases whatever a tort case is.

Q. Well, now, are tort cases ones involving such accidents as I enumerated? A. They include those, yes.

Q. Do you do a great amount of that type of work, Mr. Curtis?

A. I do some of it.

Q. You are experienced in that field of the law? A. I regard myself as being experienced in that field of the law.

Q. Would you, understanding modesty, regard yourself as an expert in that area of the law? A. I would say there are many better lawyers than I am, Mr. Stewart.

Q. Now, Mr. Curtis, in 1962, after Mrs. Sitwell left George Washington Hospital, you were in touch with the hospital as her attorney, were you not?

A. As I recall, I went to see her at the hospital.

Q. The question was: You were in touch with the hospital after she left the hospital as her attorney? A. I may have been; yes, I may have been.

72 Q. Well, you presented to the hospital an authorization that had been signed by her which would enable you to obtain the hospital records.

A. Yes, I do recall.

Q. Is that right? A. That is right.

Q. Now, you were getting those hospital records for what purpose?

A. To determine her medical condition.

Q. As her attorney? A. From a legal point of view. Yes, a lawyer has to know a certain amount of medicine.

Q. And what were you going to determine? What was your purpose in getting these and determining her medical condition? A. I was representing her in *Sitwell versus the District of Columbia* as a result of an accident at Seventeenth and Mount Olivet Road, and I had to refer to the Maryland case against Paramount Construction Company through Leon Pierson; and I was endeavoring to determine her medical condition for the purposes of those cases.

Q. So then you were going to get — assemble the medical data so that the injuries determinable from the medical data and the expenses related thereto would be the subject matter and used in those cases against the District of Columbia — that material, that information was to be used in connection with the claims of Mrs. Sitwell against Paramount and the District of Columbia?

73

A. Yes.

Q. Isn't that right? A. That is correct.

Q. And in the course of the handling of the case against the District of Columbia and participating in the handling of the case against Paramount, you did, in fact, on her behalf claim that all of the injuries for which she was treated at George Washington Hospital in 1962 and all the further injuries which she claimed were sustained by her during the course of the hospitalization — those were all claimed by you as her attorney against Paramount and the District of Columbia. Is that right? A. I would have to review the file, Mr. Stewart. I don't recall.

Q. All right, sir. It's right in front of you, the one against the District of Columbia. Would you review it, please, and tell us if that is a fact.

[Witness looks over the file.]

A. I have a clear recollection now, Mr. Stewart.

THE COURT: The question is now whether you did reflect that in the action you brought against the District of Columbia and Paramount.

74 THE WITNESS: Well, we didn't claim all of the injuries, Mr. Stewart. We didn't claim all of the injuries in this D.C. case. We excluded some injuries.

BY MR. STEWART:

Q. Do you want to look at the pleadings file, including the answers of Mrs. Sitwell to interrogatories, the answers being under oath in that case?

A. Well, you ask me what I claim?

Q. That's right. A. Well, I have a complaint here. I have nothing in here where I said that she was mal-practiced by Brian Blades. That's a different — a different case entirely.

Q. You mean . . . A. The only case I have here is the case that came out of — referring to the accident.

THE COURT: Mr. Curtis, . . .

THE WITNESS: Yes, sir.

THE COURT: . . . would you please look at the claims and see what they embrace. Do they embrace claims for hospital and so forth?

THE COURT: I assume that is part of your question, Mr. Stewart?

MR. STEWART: Yes, Your Honor.

THE COURT: Expenses at George Washington University Hospital? Is that a part of your question?

75 MR. STEWART: Yes, Your Honor.

THE WITNESS: Well, we claim substantial sums of money for hospital, medical, physical, and psychiatric care and attention in consequence of her injuries.

BY MR. STEWART:

Q. Now, would you look at the answers of your client, the written interrogatories, in that file and tell us if she wasn't claiming against the District of Columbia the cost of the hospitalization at the George Washington Hospital and the injuries suffered there as she claimed them to have been suffered. A. Well, I think that whatever the document says, it speaks for itself. Now, what are you asking me to do?

Q. I am asking you to look at it because you didn't have any recollection, Mr. Curtis.

THE COURT: He asked you to look at it to refresh your recollection, sir.

[Witness looks through the papers.]

THE COURT: Can you refer him to particular pages to help in the interest of time, Mr. Stewart?

MR. STEWART: I had markers in there.

THE WITNESS: Your Honor, I find eleven pages of interrogatories.

MR. STEWART: All right, sir.

BY MR. STEWART:

76 Q. Suppose you look at interrogatory number 10 and then the answers of your client to interrogatory number ten.

[Witness looks at the particular reference.]

A. I see the answer, and I say it has nothing to do with Brian Blades or George Washington Hospital.

Q. That isn't the question. Does that refresh your recollection as to what was being claimed against the District of Columbia, Mr. Curtis? That's the question. A. Yes.

Q. All right.

And you were claiming, on her behalf, in that lawsuit against the District of Columbia, all of the medical care and treatment that this lady had received at George Washington Hospital for injuries which she claimed existed before she went in there and for other incidents that developed after she was in there. Isn't that true? A. Well, we certainly made claim for everything that happened before she went in there.

Q. And you made claim for the operations that she underwent while she was there? Isn't that true? A. We made certain claims for the operation, but we didn't claim any mal-practice by Brian Blades or George Washington University Hospital.

77 Q. You didn't spell it out in there because you were claiming the benefit of the hospitalization and the cost of it against the District of Columbia.

A. No, that was a different lawsuit.

Q. Now, you are not answering my question, Mr. Curtis.

In negotiating and in presenting the claim of Mrs. Sitwell for consideration against the District of Columbia and against Paramount, did you not say in pleadings, correspondence, and verbally, that most of the expenses that Mrs. Sitwell had were some six to seven thousand dollars in hospital bills and medical bills? Didn't you say that? A. I think it was something like that.

Q. All right.

And that was for the hospitalization at George Washington. Isn't that right? A. I am merely somewhat at a disadvantage, you know. I don't really have a file here. I haven't looked at it in a long time. I don't really know.

Q. You knew you were coming here to testify, didn't you? A. I found that out a day or so ago.

Q. All right.

And you knew that you were to appear before a Federal Judge and a jury of twelve people who would be interested in knowing what you have to say.

78           A. I thought they would ask me what happened at the settlement, and nobody's asked me that. If you want to ask me, I'll be glad to answer it.

MR. STEWART: I wonder if the witness might be reminded of the witness' functions, since he is an attorney, Your Honor.

THE COURT: I would assume this wouldn't be necessary, Mr. Curtis. You know as an experienced lawyer, or you should know, that you are appearing here as a witness, not counsel. You will have the question put to you and if you understand it and can answer it, answer it; and if you can't answer it, say so and stop.

THE WITNESS: All right.

BY MR. STEWART:

Q. Now, we have in evidence here, Mr. Curtis, as Defendant's Exhibit Number Two, the complaint which was filed in Federal District Court in Baltimore in the action against Paramount Construction Company. I would like to invite your attention to paragraph 5(a) and ask that you read that, please.

[The witness complies.]

Have you had a chance to read it?           A. Yes, I have.

Q. Now, as a result of reading it, that refreshes your recollection, does it not, that in the suit against Paramount, you were claiming on behalf of Mrs. Sitwell the hiatal hernia and the operations that she underwent at George

79           Washington Hospital and the possibility of additional surgery that might be needed. Isn't that right?           A. Well, it could be . . .

THE COURT: You will answer the question "yes" or "no" and then explain it if necessary.

THE WITNESS: Yes, well, I would say — I would say no, but I'd like to explain the "no."

BY MR. STEWART:

Q. All right.



You go ahead and explain the "no." A. It could be taken to mean that we are claiming that, but it only refers to that part which has nothing to do with Mr. Davis' case against the Hospital and Mr. Brian Blades for the mal-practice. It doesn't have anything — it can be read both ways.

Now, Mr. Pierson — I'm not sure whether I should answer this or whether Mr. Pierson should answer this.

Q. All right, sir.

Now, so that we will all understand what can be read two ways, paragraph 5(a) states — paragraph 5(a) of this document reads: "She received severe, painful, and permanent injuries, which cause and still cause her great physical pain, mental anguish, and emotional disturbance; that by reason of her said injuries, she required hospitalization and surgical and medical and  
80 psychiatric care and attention; that among her said injuries was a hiatal hernia, which required her to undergo several operations and may require her to undergo another operation." A. That's right.

Q. Now, you say that can be read two ways. Is that right? A. Well, I — yes, that question can be read two ways.

Q. All right.

And you say that despite your knowledge that it's contained in a pleading filed in a Federal Court on behalf of Mrs. Sitwell against Paramount Construction Company? A. I certainly do, yes.

Q. And this document was signed by you and Mr. Pierson?

A. That is right. A lawyer could read it two ways.

[Pause]

I mean the way you are reading it and the way I am reading it are two different ways.

Q. You referred the mal-practice claim to Mr. Davis, did you not?

A. My impression is . . .

Q. I'm not interested in your impression. I want you to tell us yes or no, sir. A. I can give my best recollection.

81 Q. You do that, please. A. My best recollection is that I referred

them to Mr. Davis as a separate case, separate and apart from these cases.

Q. So then for a while you were representing this lady in connection with her mal-practice claim. At the same time, you were representing her in connection with her lawsuit against Paramount, in connection with her lawsuit against the District of Columbia. Is that right? A. Again, I would like to say "no," but I would like to explain it.

Q. Go ahead and explain it, Mr. Curtis. A. Mr. Davis is so much better than I am as a lawyer . . .

THE COURT: That wasn't the question, sir.

THE WITNESS: Well, I'm explaining the answer, Your Honor.

THE COURT: No, you are not explaining it at all, with all due respect to you. Please. The question which he had put to you: "Were you simultaneously at any time, any time, representing this plaintiff in suit against the District of Columbia and also in a mal-practice suit?"

THE WITNESS: Well, Your Honor, I said "no," and I'd like to explain my answer.

82 Now, the answer on the mal-practice suit is that I did not represent her. I referred her to Mr. Davis to represent her. I represented her in the other suit, and I referred Mr. Davis to represent her in the mal-practice suit because I felt he was the better man.

THE COURT: Set me straight, sir. Didn't you just previously say that at one point you did represent her in a mal-practice suit also?

THE WITNESS: No, I never represented her in a mal-practice suit. I . . .

MR. STEWART: A mal-practice claim did you represent her?

THE COURT: I must have misunderstood.

THE WITNESS: She came to me with this, and I referred her to another lawyer. Now, I don't know, Your Honor, how Your Honor would view it, but I viewed it that I was not representing her — that I was referring her. I found a lawyer who could handle it and I referred her to him.

BY MR. STEWART:

Q. She didn't come into you with this. She was already a client of

yours. Isn't that right? A. She was a client of mine.

Q. All right.

83 And you were representing her in connection with her claim arising out of the automobile accident? A. That's right.

Q. And she says to you: "Now I want to present a claim against the hospital . . . A. I didn't hear her say . . .

Q. . . . and against Doctor Blades." A. I didn't hear her say that.

Q. Well, then, did she consult you about it? A. She consulted me about it. She didn't say to me in those words: "I want to — I want you to represent me against the hospital and Doctor Blades."

Q. She wasn't interested in that? A. [No response]

Q. This was — whose idea was it then? A. [No response]

Q. Was it your idea, Mr. Curtis? A. She inquired about the case and I suggested that it took a more experienced man than I, and I referred the matter to Mr. Davis. And, based upon his legal scholarship and his superior knowledge, the suit was filed.

Q. Did you represent her in Civil Action 2409-63, *Sitwell versus Government Employees Insurance Company*? A. Yes, I did.

\* \* \* \* \*

84 Q. Now, this was another suit filed on behalf of Mrs. Sitwell in this Court. Isn't that correct? A. May I see it?

Q. Yes. A. It might refresh my recollection.

[Witness looks over file.]

THE COURT: Mr. Davis, I think I ought to say what the parties have agreed to being done is by virtue of a courtesy extended to you and to Mr. Curtis by taking him out of order. So this would be in a sense, I assume, rebuttal because I rely on what you say the representations will be that are going to be made by the plaintiff. That is one reason, sir.

85 THE WITNESS: (In answer to pending question)

Yes, I filed this.

BY MR. STEWART:

Q. All right, sir.

And that file, subsequently, was transferred or properly stated, certified, to our Court of General Sessions for further action. Is that right?

A. That is true.

Q. And you are still counsel of record for her in that case? A. No, I am not.

Q. Who represents her in that case? A. Well, I referred that one to Mr. Davis.

Q. Well, you filed suit. Is that right? A. Right.

Q. And you continued to handle it for a period of time? A. Yes, but I wasn't too well. I had two automobile accidents of my own, and I referred some of my cases out and I have been . . .

THE COURT: No, Mr. Curtis, "You filed suit?" is the only question.

THE WITNESS: Yes, I filed suit.

THE COURT: And then after you filed it, did you refer it to Mr. Davis?

THE WITNESS: Yes, sir.

86 THE COURT: All right, sir.

BY MR. STEWART:

Q. So that's an instance where you referred a matter involving Mrs. Sitwell to Mr. Davis after suit was filed? A. Yes, that's right.

Q. And the mal-practice claims against George Washington Hospital and Doctor Blades represent an instance where, before filing suit, you referred the matter to Mr. Davis? A. Yes.

Q. Do you have an interest in the financial outcome of this litigation? A. I don't really know. You would have to ask Mr. Davis.

Q. Now, Mr. Curtis, you are the referring lawyer. Do you or don't you have an interest in the outcome of this litigation? A. I tell you the same thing: I just don't know. It depends on what view Mr. Davis takes of it. I can't — if Mrs. Sitwell should win her case and he shouldn't send me any money, I would never sue him. I don't know that I have any case here. I simply sent the file over to him.

Q. What is the custom . . . A. The custom?

87

Q. . . . in sending a file . . .

MR. OLENDER: I object.

MR. STEWART: . . . . from your office to Mr. Davis?

MR. OLENDER: Objection to what the custom is, Your Honor.

THE COURT: This gentleman is a lawyer. He is a member of this Bar. I think that is a pertinent question.

THE WITNESS: I think the custom is to send these (files) to a lawyer who refers the case.

BY MR. STEWART:

Q. So then. . . A. However, I know of no lawyer who ever sued another lawyer for not . . .

THE COURT: I think you have answered the question.

THE WITNESS: Yes.

BY MR. STEWART:

Q. So, in reflection then, you would agree you do have an interest in the outcome of the litigation of *Sitwell versus George Washington Hospital and Doctor Blades*. Isn't that true? A. There again, Mr. Stewart, I would

answer "no" because when I sent him this case, I didn't send it as a referral in which he would send me a fee if he won the case. I sent him the case in a sense that this was one that was a little too much for me at the time but

88 it was about his size. And that's what I meant when I said: "It depends on Mr. Davis whether I have an interest in it."

I didn't expect to get any money out of it. I didn't think I had any financial interest in it whatsoever. Anything that he would do would be a gratuity.

I just gave another lawyer a gratuity of \$166 in a case where he resigned.

THE COURT: Let us try to stick to this, please.

THE WITNESS: I went forward and won the case and I sent him a gratuity for the work that he did on it.

BY MR. STEWART:

Q. What interest do you have in the litigation pending in the Court of General Sessions? A. I have no interest whatsoever.

Q. What about *Sitwell versus Government Employees Insurance Company*? A. Well, in that case I asked for a fee for the work that I did, in that case, because I had done quite a bit of work. But in this case, I have never asked for a fee; I've never asked for a referral or anything. It was just a case that was too big for me, and I referred it to Mr. Davis because I thought it was his size.

Q. Now, . . . A. I have no financial interest in this whatsoever.  
89 It does not affect my testimony in this regard.

Q. Do you have a financial interest in the outcome of the case of *Sitwell versus Evans Farm*, pending in the Circuit Court in Fairfax County, Virginia? A. I have no financial interest in that whatsoever.

Q. Did you have a financial interest in the case of *Phronsie I. M. Sitwell, plaintiff, versus Robert Clark Dale, Jr.*, in the Circuit Court of Bedford County, Virginia? A. That case, Mr. Lambeth, who used to be the Commonwealth Counsel, and I tried together. We were the trial lawyers in that.

THE COURT: Mr. Witness, do you have any interest? That is the only question.

THE WITNESS: Uh — is that in the past tense or the future? May I have the question again, please, Mr. Stewart?

BY MR. STEWART:

Q. Yes. I asked if you had a financial interest . . . A. Yes. I was the trial lawyer in that case.

Q. And when was that case tried? A. It was tried several years ago. I don't remember the exact date. I tried it together with another lawyer.

Q. How about April 28th and 29th of 1965? Does that sound like the trial date? A. They could be the dates, four or five years ago.

90 Q. And you received a fee for your efforts on behalf of Mrs. Sitwell,



your client in that case. Is that right? A. I got some money, yes.

Q. All right.

Now, in that case — are you familiar with the fact that this suit. . .

THE COURT: Which suit? The suit in this Court, sir?

MR. STEWART: Yes, Your Honor, the case of Mrs. Sitwell against George Washington University and Doctor Blades, was filed in this court on May 14, 1965?

THE WITNESS: Yes, I think I am familiar with that. I have some notes here. It says — let me see.

THE COURT: I think you have answered the question.

THE WITNESS: Yes, I am familiar, yes.

BY MR. STEWART: Now, that would appear to be, if my arithmetic is correct, just about fifteen days after you were down in Bedford County, Virginia, representing this lady in her suit arising out of an automobile accident. Is that right? A. Well, if your arithmetic is correct, then that's right.

Q. Now, was Mr. Davis in the lawsuit down in Bedford County, Virginia?

91 A. Had no connection with it. Bolly Lambeth, who was the former District Attorney down there, and I tried that case together.

Q. All right.

Now, outside of the notations as to the date of the filing of this suit, do you have other notes there, Mr. Curtis? A. Well, I had some notes.

Q. May I see your notes, please? A. Yes. I had this note (handing paper to Mr. Stewart) and I had a note written down here as to what happened at the settlement, but I could give it to you from recollection, if you want it — what we talked about.

Q. I asked you about your notes, sir. Do you have any notes other than this chronology that you have shown me of dates? A. That's the only note I have.

Q. All right.

Now, did you prepare this note? A. Yes, I think I did, yes.

Q. Do you want to look at that and tell me to your best . . . A. To my best recollection.

92 Q. Where did you prepare that, sir? A. I think I got it—I don't recall. I found it in the file or something like that.

Q. Well, was it prepared for you by . . . A. Well, I had a . . .

Q. Wait a minute, Mr. Curtis.

Was it prepared for you by Mr. Davis? A. I don't really recall right now. It could have been. It may not have been. I don't really recall that.

Q. Well, how long have you had it? A. Well, I've had it for some time. I have a Sitwell file in my office and it was in the Sitwell file, and I reached in and got it.

Q. Does that include the medical reports and bills and hospital records?

A. Well, there was some stuff in there. I tried to send everything back, but you know how a file is. Sometimes it gets bigger than just paper and you may not be able to send everything back.

Q. I wonder if you mind our having this marked . . . A. Mark it.

Q. . . . and we will return this to you at the completion of the case.

A. You can keep it if you want to.

THE DEPUTY CLERK: Defendant's Exhibit Number Eight marked for identification.

MR. STEWART: Your Honor, I believe that's all.

\* \* \* \* \*

## REDIRECT EXAMINATION

BY MR. DAVIS:

Q. Mr. Curtis, aside from referring Mrs. Sitwell to me with a claim—referring now to the instant case, Civil Action 1176-65, in this courtroom—have you done any work in connection with this case, treating with depositions or anything of that kind? A. Absolutely nothing whatsoever. . .

THE COURT: All right. You have answered the question.

BY MR. DAVIS:

Q. Are you aware of the fact as a lawyer under the Canons of Ethics of the American Bar Association there can only be a division of fees. . .

MR. STEWART: I object to that. He is his witness.

THE WITNESS: I am . . .

MR. DAVIS: He's objected to this . . .

THE COURT: I'll let him answer it.

BY MR. DAVIS:

94 Q. Are you aware of that fact? A. I am aware of that. I am aware of that.

THE COURT: Now, you can't say you are aware of that, sir; he hasn't finished asking the question.

BY MR. DAVIS:

Q. Are you aware of the fact that the Canons of Ethics of the American Bar Association that there can be no splitting of fees unless it is commensurate with the work done by forwarding or referring attorney? A. I am aware of that. I have no financial interest in this case, Mr. Davis.

Q. Mr. Stewart has pinpointed your attention to Defendant's Exhibit Number Two, which is the complaint filed in the Baltimore action against the Paramount Construction Company.

It is a fact, is it not, that the only specific injury mentioned in paragraph 5(a) is the hiatal hernia as a result of being thrown into the steering wheel of the car? A. That was my intention in drafting the complaint.

Q. Now, either the D.C. action, growing out of that accident, or the Baltimore case, did you ever claim that as a result of the accident of October 31, 1960, she wound up with foreign objects in her stomach?

MR. MURPHY: Your Honor, I object.

THE WITNESS: We never claimed . . .

MR. STEWART: Just a minute. We object to . . .

95 MR. DAVIS: These are the allegations in the pre-trial order in this case.

THE COURT: Just a moment. Mr. Murphy, what is your objection?

MR. MURPHY: I object, Your Honor. Mr. Davis is not testifying. If he wants to ask what allegations he made, I think that's proper; but to tell him what allegations he is supposed to have made is something else.

THE COURT: Reframe your question, counsel.

BY MR. DAVIS:

Q. Did you make any allegations in the Baltimore case and the D.C. case, too?

THE COURT: Excuse me, Mr. Davis. These are in evidence, aren't they? Or they will be in evidence and speak for themselves.

MR. DAVIS: Excuse me, sir, but Mr. Curtis hasn't testified to that and, I assume, I wanted to get it from him. Then it will be in evidence when Mrs. Sitwell takes the stand. . .

THE COURT: All right, sir.

MR. DAVIS: . . . because they are of record in this action.

THE COURT: All right, sir.

What do you want to get from him?

96 MR. DAVIS: I want to know if in the Baltimore action or the D.C. action, worked out from the 1960 Motor Vehicle Act, he claimed a foreign object in the abdomen of this patient.

THE COURT: Mr. Davis, the pleading will speak for itself and that is all, period, as I think you know.

BY MR. DAVIS:

Q. In any action, D.C. or Baltimore, growing out of the 1960 accident, did you contend or claim that this patient was discharged from the hospital with a staphylococcus infection? A. Never.

Q. Did you claim that. . .

THE COURT: Mr. Davis, I think we ruled on that. Now, let's not depart from that ruling, please. What he is speaking of are the pleadings themselves. They are specifically within the four corners. They are susceptible to interpretation. They may speak for themselves but not through Mr. Curtis at this time.

THE COURT: Ladies and gentlemen, you do not get anything referred to that by Mr. Curtis.

The pleadings speak for themselves and they will be before you.

BY MR. DAVIS:

Q. Mr. Curtis, as just developed by Mr. Stewart, you knew in February of 1966 that this mal-practice action was pending in this court, did you not?

97 A. I certainly did.

Q. Did you ever consult me with reference to settlement of the Paramount Construction case before it was settled? A. No. That settlement had nothing to do with this case.

THE COURT: Now, Mr. Witness, you are a lawyer. Don't do that any more. Do not do that again. You are a lawyer and know better than that.

BY MR. DAVIS:

Q. Did you or did you not . . .

THE COURT: You have double answered it.

THE WITNESS: Yes. . .

THE COURT: You get the question and answer it and then stop, sir.

THE WITNESS: Yes, sir.

BY MR. DAVIS:

Q. Did you or did you not ever consult with me concerning the ultimate disposition of the Paramount Construction Company case in Baltimore?

A. No, I never did.

Q. Now, it has already been read into evidence, Mr. Curtis—or it will be when we finish reading it—in response to supplemental answers to interrogatories in the Baltimore case, there was claimed in that action medical expenses amounting to \$5,870.41 and loss of earnings and earning power in the amount of \$42,158.00, for a total of approximately \$48,000.00.

98

Now, why—I'm asking you directly—why is it you and Mr. Pierson settled the Paramount Construction case. . .

MR. STEWART: Objection.

THE COURT: I will sustain the objection. . .

MR. DAVIS: . . . and the District of Columbia case for \$1500?

THE COURT: I will sustain the objection to that, sir.

MR. DAVIS: That's all I have of this witness.

\* \* \* \* \*

# RECROSS-EXAMINATION

BY MR. STEWART:

Q. You agree, do you not, Mr. Curtis, that when one lawyer refers a matter to another, the referring lawyer has done some work on the case and it is perfectly proper under the Canons of Ethics of the American Bar Association, for him to be paid commensurate with those services?

MR. OLENDER: I object. Mr. Stewart is testifying his opinion.

MR. STEWART: I am cross-examining him, am I not?

99 THE COURT: This is apropos to the question which I permitted by Mr. Davis relating to the Canons of Ethics. Just answer yes or no.

THE WITNESS: Your Honor, I don't quite understand the question. There are two parts to this question.

THE COURT: Well, the parts are rather simple: If you do refer a case and if you, in fact, do something on it . . .

THE WITNESS: If I do something on it . . .

THE COURT: . . . you do agree that you are entitled to a fee without violation of those ethics?

THE WITNESS: Yes.

THE COURT: All right.

Is that your question, Mr. Stewart?

MR. STEWART: Yes, Your Honor.

THE WITNESS: If I do something on it, yes.

BY MR. STEWART:

Q. Well, in this case involving the claims of the mal-practice against the hospital and against Doctor Blades, you had done something in the way of investigation on that matter, had you not? A. I would say no. I said that before. I referred the case to him. It wasn't my size. Anything he gave would be a gratuity.



Q. That is not what I asked you . . . A. I had no legal . . .

100 THE COURT: Mr. Curtis, you are a lawyer, sir. He isn't asking you that, sir, and please don't fence with counsel.

BY MR. STEWART:

Q. You presented the authorization to obtain the hospital records, did you not? A. Yes, but that is in conjunction with these other cases.

Q. You conferred with Mr. Fred Vinson, Jr., a house counsel for the hospital? A. I remember him, yes.

Q. Yes, you conferred with him. A. A very fine gentleman.

Q. You conferred with him about the hospital records. Isn't that true? A. I think I did, yes.

Q. And not only did you want the hospital records in connection with the investigation of your claim—of the claim of Mrs. Sitwell, I should say—but you wanted the names and addresses of the nurses and the orderlies and the assistants who were on duty day or night during your client's last confinement for the 35-day period before she left. Do you remember that?

A. I don't remember it. I only remember Mr. Vinson is a very fine gentleman. His father was a judge at one time. That is all I remember about it.

101

Q. Take a look at this, will you, Mr. Curtis, and see if that isn't a copy of a letter that you addressed to Mr. Fred Vinson, Jr., whose father was a former Chief Justice of the United States?

[Witness looks at paper.]

A. Yes, it's dated December 12, 1962. I don't . . .

THE COURT: Does it refresh your recollection, sir?

THE WITNESS: It's so faint, Your Honor. It's . . .

THE COURT: You can't read it, sir?

THE WITNESS: Well, I . . .

THE COURT: Would you like someone to read it to you, sir?

THE WITNESS: No, I'll read it. Just give me some time.

THE COURT: All right.

[Witness reads the paper.]

THE WITNESS: I did ask for that. Of course, I don't remember. It was 1962. My memory isn't that good, Mr. Stewart.

BY MR. STEWART:

Q. Now, Mr. Curtis, you wouldn't need the names and addresses of the nurses and the orderlies and assistants who were on duty day or night over a 35-day period of hospitalization in connection with any little old automobile  
102 accident, would you?

A. I don't know, Mr. Stewart. I try to do a thorough job in the few cases I handle. I try to do everything that can possibly be done to help my client and investigate their case thoroughly; and some of my files are that thick (demonstrating with hands). And when I do a job, I try to do a full job. That's why I referred this case to Mr. Davis because I didn't have the time to do it.

Q. And Mrs. Sitwell complained to you that certain of the nurses or certain of the orderlies or certain of the hospital aides had mistreated her or had been rough in their treatment of her?

MR. DAVIS: I object, Your Honor. It's been excluded my getting a response to those questions, and it's the very issue in a mal-practice case.

THE COURT: What, sir?

MR. DAVIS: If he's going to open it up, I submit I have the right to show all of the allegations in the present and current case.

THE COURT: In the allegations of what, sir?

MR. DAVIS: Of the mal-practice.

THE COURT: You certainly have. You certainly have the right to show the things that speak for themselves, sir. Indeed, they will. And I'll take judicial notice of it in this case.

103 MR. DAVIS: Well, we're not trying a mal-practice case and. . .

THE COURT: No, we are not.

MR. DAVIS: . . . I think we are going far afield from the one sole issue in this case.

BY MR. STEWART:

Q. Had she made such a complaint to you, Mr. Curtis? A. [No response]

Q. Just yes or no. A. I don't remember, Mr. Stewart. You seem to have a letter in your hand. If you will let me see it, I'll refresh my recollection and I'll be able to answer it.

\* \* \* \* \*

104 Q. \* \* \*

Isn't it a fact that you were asking for the names and addresses of the nurses, the orderlies, and the assistants on duty over this 35-day period in connection with your investigation of the alleged mal-practice claims against the hospital and the doctor? A. I don't remember. That's my answer. I don't remember.

MR. STEWART: Will you mark this, please, Mrs. Lyman?

THE DEPUTY CLERK: Defendant's Exhibit Number Nine marked for identification.

BY MR. STEWART:

Q. Would you look at this document.

I'm sorry, I should have it marked first.

MR. STEWART: Would you mark this, please?

THE DEPUTY CLERK: Defendant's Exhibit Number Ten marked for identification.

BY MR. STEWART:

Q. Will you look at this document, four pages, a letter from your client, Mrs. Sitwell, addressed to Dr. Parks at George Washington University Hospital in October of 1962. A. Yes, I see it.

105 Q. Have you seen it before? A. Never saw it before in my life. There you are. Not to my present recollection.

Q. Were you looking for a specific name and address amongst the nurses and the nurses' aides? A. I do not recall.

Q. Have no recollection? A. I have no recollection. That's a hundred cases ago, Mr. Stewart, maybe more.

THE COURT: You don't need to fence. You are just to answer the question as best you can.

\* \* \* \* \*

106

## RECROSS-EXAMINATION

BY MR. MURPHY:

Q. Again referring back to the area of Mrs. Sitwell's claims, did you get the hospital records from the Bedford Hospital? A. [No response]

MR. DAVIS: I don't understand that question. We were talking about four or five claims. Which claim is he talking about?

THE COURT: He is asking you, sir. Excuse me, Mr. Murphy.

MR. MURPHY: The Paramount Construction claim and the D.C. . . .

107 THE WITNESS: I don't really recall, Mr. Murphy. I don't remember. It's an old case.

BY MR. MURPHY:

Q. You don't recall whether you even asked for the hospital records?

A. I don't recall, Mr. Murphy. It's an old case. You're asking me a specific question what I did. I don't remember now what I did. The case is four or five years old.

Q. But you did say that your usual course was to be very thorough.

A. My usual course is to try to be as thorough as possible.

Q. And did you also ask for the hospital records at the Washington Sanitarium where this lady was also hospitalized and for whose bills you made a claim? A. I don't recall.

Q. And I suppose, then, in neither one of them can you recall that you asked the names and addresses of each and every nurse and orderly who might have been on duty? A. I don't recall.

\* \* \* \* \*

THE WITNESS: Your Honor?

THE COURT: Yes, sir.

108 THE WITNESS: I believe Your Honor has the right to ask some questions, have you not?

THE COURT: Yes, sir.

THE WITNESS: Well, then. . .

THE COURT: I have no questions for you and you are excused, sir.

\* \* \* \* \*

111 THE COURT: Yes.

112 Ladies and gentlemen, I think this would be helpful to you if Mr. Stewart reads certain questions and Mr. Murphy reads certain answers from interrogatories. One counsel will read the questions and the other counsel will answer them.

I believe it will be helpful to me and I hope it will be helpful to you.

MR. STEWART: If Your Honor please, yesterday I concluded reading from Defendant's Exhibit Number Five, which were the plaintiff's answers to Defendant Paramount Construction Company's interrogatories in the suit in Federal District Court in Baltimore.

Defendant's Exhibit Number Six in evidence shows that the—from the record of the Federal District Court—that a motion was filed to require further answers to certain of those same interrogatories which I previously read.

We will not, subject to Your Honor's permission, read the questions again and the answers, which constitute the further answers of Mrs. Sitwell to the interrogatories.

THE COURT: You may proceed, sir.

[At this point, the reading of the further answers to certain of the same interrogatories begins, with Mr. Stewart reading the questions and Mr. Murphy in the witness chair answering them.]

MR. STEWART: The first question is Number 3, Mr. Murphy.

113 MR. MURPHY: Yes.

BY MR. STEWART:

Q. Did the plaintiff consult or obtain treatment from any doctors or by any hospitals from October 31, 1960, until her accident in December, 1960, for injuries alleged to have been sustained in said accident of October 31, 1960?

A. Yes.

Dr. Freeman Jenrette, November 13, 1960, Bedford, Virginia in his office.

I took two additional days from school because I was not well.

Dr. Charles Wolohon, 7401 Blair Road, N.W., December 7, 1960.

I had so much pain in the substernal area of my chest and in the left side as well as in my back and lower abdomen. I recall asking Dr. Jenrette if one ever had a biopsy made of one's chest tissue in order to determine precisely what the trouble might be. The pain had been growing worse. This was before my return to Washington in January of 1961, after being hospitalized.

I don't recall his exact reply, but he did assure me that there were tests which might reveal the likelihood of infection, growth or injury. Even then, as he and Dr. Thornton wrote in a report, he suspected a diaphragmatic hernia.

I went to all of these physicians because I was worried about the heavy chest pain, which was probably epigastric distress. Also, I was having trouble with my breathing and there was a tendency toward nausea and vomiting and, in order to sleep at all, I had to sleep on at least three pillows or double over the second one.

MR. STEWART: What is the next number?

MR. MURPHY: Four.

BY MR. STEWART:

Q. If the answer to the foregoing interrogatory is "Yes," state the name and address of each doctor and hospital by whom or at which the plaintiff was so examined or treated, and the date or dates of such examination or treatment between October 31, 1960, and the date of the plaintiff's accident in December, 1960.

- A. (1) Dr. Freeman Jenrette, Depot Street (now) Bedford, Virginia.  
 (2) Dr. Richard Clapp, Takoma Clinic, Takoma Park, Maryland.  
 November 20, 1960.

Dr. Clapp is now a member of the staff of Cove Neck Medical Clinic in Zephyr Cove, Nevada. All of the records are being sent out to him to refresh his memory regarding the case.



Dr. Wolohon is a member of the staff of the Takoma Clinic and looked after me, as an internist, for two weeks, after I left the George Washington University Hospital in June of 1962. I had a staphylococcic infection in my abdomen which the George Washington University physicians refused to treat, and it took two weeks, with intensive injections of anti-biotics, to recover.

MR. MURPHY: The next one is Number 5.

MR. STEWART: Number 5?

MR. MURPHY: (Nods affirmatively)

BY MR. STEWART:

Q. State the amount of charge of each doctor and hospital for services so rendered between October 31, 1960, and plaintiff's accident in December, 1960.

- |  |         |
|--|---------|
| A. (1) Dr. Freeman Jenrette                                      | \$ 8.00 |
| (2) Dr. Richard Clapp  | \$14.00 |
| (Medical charge between October 31, 1960, and December 13, 1960) |         |
| (3) Dr. Charles Wolohon  | \$ 6.00 |

My income tax for 1960 reflects the payments to Dr. Wolohon and Dr. Jenrette, as well as to the Takoma Clinic for Dr. Clapp.

MR. MURPHY: The next one is 8. I don't know whether . . .

116

BY MR. STEWART:

Q. Number 8 reads: "Attach to your answers copies of all written reports made to you by any experts whom you propose to call as witnesses."

MR. MURPHY: The answer is: "Physicians do not usually make reports to patients, but to hospitals and other physicians. I, therefore, have very few. What I do have, I am getting copied photographically and they will be sent on for the files.

Mr. Arthur S. Curtis did have permission to garner certain reports for his own files, which I have never seen or read, and would be interested in doing so.

I don't know what a patient should have in hand reports by physicians when it is not the usual thing for doctors to put such reports in the hands of patients.

I think this statement is based on a supposition rather than factual information."

MR. MURPHY: The next one listed is Number 13.

BY MR. STEWART:

Q. Itemize the expenses paid or incurred by you as a result of the accident on October 31, 1960.

117	A. 12/60 - 1/61 Bedford Memorial Hospital, Bedford, Virginia	<u>\$280.00</u>
	1/62 Washington Sanitarium and Hospital, Tacoma Park, Maryland-D.C.	<u>\$50.05</u>
	2/18/62 - 3/11/62 George Washington University Hospital, Washington, D. C.	<u>\$1,111.65</u>
	5/7/62 - 6/10/62 George Washington University Hospital, Washington, D. C.	<u>\$2,607.15</u>
	6/10/62 - 6/24/62 Washington Sanitarium and Hospital	<u>\$515.81</u>
	6/24/62 Overnight stay in hotel in Lynchburg because of inconvenience in trail connections and taxis, plus breakfast.	
	Virginia Hotel, Church Street, Lynchburg, Virginia.	<u>\$10.25</u>
	6/25/62 - 7/2/62 Bedford Memorial Hospital, Bedford, Virginia	<u>\$136.50</u>
	Travel back and forth to Washington for check-ups and staying in hotels, when my apartment was not available for my own use.	
	Approximately	<u>\$200.00</u>
	Bill from Dr. Brian Blades for February and May operations who looked after me at George Washington University Hospital	<u>\$835.00</u>

Dr. Wolohon, who looked after me in the	
Tacoma Park Hospital	<u>\$76.00</u>
Dr. Rucker, who looked after me in the	
Bedford Memorial Hospital	<u>\$48.00</u>
Treatments and medicines	(No sum listed)

118 I don't have in front of me the bill for the hospitalization in the Bedford Memorial Hospital in December of 1960 - January of 1961, but shall have a copy of that for the lawyers very soon. In fact, copies of all of the bills are being made for whatever use they may serve.

MR. MURPHY: The next question is 14.

MR. STEWART: Fourteen.

BY MR. STEWART:

Q. If the claimant claims to have lost any salary as a result of the accident October 31, 1960, state the period during which she claims to have lost salary as a result of said accident and the name of her employer, and the total amount of such lost salary.

A. June 30, 1962 - December 31, 1962 -	
Board of Education, District of Columbia,	
Washington, D. C.	<u>\$3,924.00</u>
Summer employment of 1962 could have	
brought in (I am a good writer and	
administrator)	<u>\$1,200.00</u>
January 1, 1963 - December, 1963	<u>\$9,410.00</u>
Summer employment	<u>\$1,200.00</u>
January 1, 1964 - December, 1964	<u>\$10,050.00</u>
Summer employment	<u>\$1,200.00</u>
January 1, 1964 - December, 1965	<u>\$10,050.00</u>
Summer employment	<u>\$1,200.00</u>

119 This information is the very best that I can give now. There may be some slight modifications and as I receive the information, I shall send it in, along with copies of all bills which I have in hand, if they are wished."

MR. MURPHY: Signed by Mrs. Sitwell and it says: "Subscribed and sworn to before me this 9th day of February, 1965. Rebecca H. McCauley, Notary Public."

MR. STEWART: Is there any mark on that document, Mr. Murphy, which indicates when it was filed in the Federal District Court in Baltimore?

MR. MURPHY: It was filed on the 22nd day of March, 1965.

MR. STEWART: Now, if Your Honor please, as you have announced, the Court would take judicial notice of the file of this court in Civil Action 2634-63, Phronsie I.M. Sitwell, plaintiff, versus District of Columbia, defendant.

I would like, having extracted from that file, the original set of written interrogatories, served by the defendant, District of Columbia, upon the plaintiff through counsel.

I would like to read certain of the written interrogatories in that case and have Mr. Murphy read the answers of Mrs. Sitwell to those interrogatories.

THE COURT: You may, sir. Would you give me the number of that action.

120 MR. STEWART: 2634-63.

THE COURT: Thank you.

MR. STEWART: I will not read all of the interrogatories, Your Honor.

THE COURT: You will specify the ones you are reading.

MR. STEWART: I certainly will.

MR. STEWART: "To Phronsie I. M. Sitwell, care of Arthur S. Curtis, Esquire, attorney for plaintiff, 816 National Press Building, Washington, D. C.

The following interrogatories are addressed to you, pursuant to Rule 33 of Federal Rules of Civil Procedure. Each interrogatory must be answered fully, under oath, in writing, and your answers filed and served upon counsel for the defendant within fifteen days from the date of receipt thereof.

These interrogatories are being propounded to you relative to an accident on October 31, 1960, at or near the intersection of Mount Olivet and Bladensburg Roads, Northeast, Washington, D. C.

Question Number 2.

BY MR. STEWART:

Q. "State whether you have ever changed your name or been known by any name or surname or a different spelling thereof than as appears in the subject complaint. If the answer is 'Yes,' state the following: (a) the names used; (b) the dates and localities where said names were used; (c) list and identify all papers, documents, or applications for employment wherein such other names were used."

A. "(a) Marsha Sitwell (used professionally in writing for publication from time to time)

(b) District of Columbia and Bedford, Virginia, after I married Captain Herbert Cecil Fitzroy Sitwell."

MR. STEWART: Question Number 3.

BY MR. STEWART:

Q. "State each address at which you have resided within the past fifteen years and the dates that you began and ceased residences at each of said addresses." A. "Permanent address for last 18 years, Three Otters Estate, R. F. D. 2, Bedford, Virginia.

Additional addresses during this period: '4733 First Street, Southeast, D. C. - 1950 to 1952; 1435 Holly Street, Northwest, Washington, D. C. - 1952 to 1962.

In October of 1960, my apartment was still rented to a State Department family by the name of Crockett because of illness in the family, and I lived with Mrs. Mildred Lemmon, 5700 Fifth Street, Northwest, Washington, D.C.

Following my stay with Mrs. Lemmon, I went to live temporarily with Miss Ruth Barnes, hoping to get my own apartment back soon. Her address was 520 Aspin Street, Northwest, Washington, D. C.

As I recall, I went there on October 31, 1960, and remained there until mid-April of 1961.

Arlington Towers, Arlington, Virginia, April, 1961, to May 30, 1961.

1435 Holly Street, Northwest, Washington, D. C., May 31, 1961 - June 20, 1961."

MR. STEWART: Number 7.

BY MR. STEWART:

Q. "If the plaintiff is making any claim for loss of wages or other income as a result of the occurrence referred to in the complaint, state the following: (a) Set forth in detail all earnings for sums of money which you claim to have been deprived of by reason of said injuries. (b) State the method of computing said losses. (c) The dates during which you were prevented from earning said income. (d) For each date, state whether you were working part time or whether you were fully unable to work." A. "Yes, I'm making claim for loss of salary and other income as a result of the accident of October 31, 1960, referred to in the complaint.

(a) The difference between my disability pension and the present salary being paid teachers with a Master's Degree, plus thirty university credit hours  
123 training. Too, I could have earned during the summer teaching in a college, serving on an administrative staff, or writing for a newspaper or magazine.

(b) Said losses would be computed on the basis of the salaries now being paid teachers in my category. (Refer to teacher's salary scale)

(c) From June 30, 1962, up to the present time.

It will probably be a good while yet before I am able to resume regular teaching duties or do other professional work.

(d) Due to muscle spasms, heavy pains in the chest and abdomen, and digestive difficulties, residual, perhaps, of the operation, as well as recurrent heavy pain in my right arm and leg, I have been unable to do any sustained work of a professional nature. Even working up the interrogatories from time to time, as I have the energy to do it, is a strain to some degree."

\* \* \* \* \*

126 MR. STEWART: Number 10.

BY MR. STEWART:

Q. "As a result of the accident referred to in the complaint, set forth in detail the nature of the injuries alleged to have been sustained by you, giving the medical terms thereof and the part or parts of the body affected.

MR. MURPHY: Did you come to A now?



MR. STEWART: No, I'm about to read A.

BY MR. STEWART:

Q. (A) . . .

MR. MURPHY: Mr. Stewart, she did answer that separately.

MR. STEWART: All right. I'll stop there. Go ahead with the answer.

A. "Whiplash, herniated diaphragm or aggravation.

Vertigo, possible concussion, unsteady gait, tendencies to fall.

Cellulitis condition, weak and uncertain grasp in right hand, loss of portion of stomach due to consequences of surgery to repair diaphragm with resultant intestinal disorders and dietary control, abdominal and rectal pain, weakened and paralyzed diaphragm, and weakened intestinal tract, with subsequent reherniation, weakened heart, due to surgery on diaphragm."

127 Q. (A) "If it is claimed that any of said injuries are permanent, set forth in detail the nature of said permanency and the disability claimed to result therefrom." A. "After almost four years it appears that the following might be considered permanent in part:

- (1) Numbness and pain in right arm
- (2) Heavy numbness in right hand
- (3) Paralysis of the diaphragm on the left side
- (4) Pain in the top of the head intermittently
- (5) Digestive difficulties (residuals of the operation, perhaps)
- (6) Recurrent hernia with guarded prognosis
- (7) Trouble in cervical spine and in lumbar region as indicated by

x-rays made by Dr. Maurice Herzmark of Washington, D. C. Pain may be allayed in part by cortisone in the cervical spine. Novocaine injections help the lumbar spine for a day or so, perhaps, but the pain persists.

There seems to be a relationship between the pain in the cervical spine and the numbness in the right arm and hand as well as the pain in these areas, including the fingers.

There also seems to be a relationship between the lumbar spine and the pain in the right leg. The heavy jolt in the area of the cervical spine as well as the lumbar spine seems to be responsible for a permanent kind of

128      arthritic condition, crippling at times as well as extremely painful.

(8) The gall bladder does not function very well, and there still seems to be some pressure in the kidney area. One physician found blood in the urine, which means that the bladder may have been bruised to some degree.

(9) The one thing that is of very great concern and possibly for which there is no real and satisfactory help, short of an additional operation, is the painful spasms in my stomach after I eat or drink the slightest amount. Medicines helped this condition for a while, but now these controls do not seem to be working very well and I am quite miserable, having to go to bed from one to two hours after each meal. This condition makes me a kind of invalid, which I resent but can do little about."

MR. MURPHY: That's the end of the A part.

BY MR. STEWART:

Q. (B) "State what physical activities you are now prevented from performing, as a result of the referred to injuries." A. "I am prevented from performing the following physical activity:

(1) I was told that I should not lift or attempt to move anything heavy at any time or stoop over for fear of widening the hole in the diaphragm through which the stomach had come against.

129      (2) I do drive my car downtown and back and sometimes to Lynchburg, a distance of about twenty-five miles; but when I drive for even an hour, I am exhausted physically and have to go to bed for an hour or so.

(3) My whole physical being seems to have been weakened by the four operations and the terrible struggle to recover.

(4) I am right-handed and when I tend to hold anything of any weight in my right hand, I am more likely than not to let it slip or drop. I have broken quite unexpectedly numerous dishes, glasses, some valuable antiques when a maid was not about to help me.

(5) Writing by hand with either a pencil or a pen is not as easy as it once was. My grasp is weak.

(6) I cannot eat a full meal at one sitting. I must eat five or six times a day in order to enjoy any kind of physical comfort even for a brief while.

(7) I cannot lie down on my stomach or back for any length of time but have to sleep on high pillows at about a forty-five degree angle; otherwise, I am subject to choking spells.

(8) When I attempt to do any work in my home, no matter what it is, it seems to move very slowly. When I walk, I am afraid of falling and tearing the diaphragm to a greater extent.

130 (9) I did try to go back to my teaching duties in January of 1961 after I left the Bedford Memorial Hospital, but I was too weak and sick and had to stay in bed at Holly Street for an additional week, much to my annoyance because I always enjoyed my work with young people.

I had to give up completely in February of 1962.

MR. MURPHY: That's the end of that portion of the answer.

BY MR. STEWART:

Q. (C) "Were you confined to bed because of said injuries and if so, from what date until what date were you so confined? A. "Yes, I was confined to bed because of said injuries.

Bedford Memorial Hospital, December 28, 1960, until January 10, 1961, with a cellulitis condition and a painful chest condition, requiring me to sleep on three pillows when I could get them or doubling two pillows. I was in bed at the Bedford home address on December 26 and 27, 1960, when Dr. Freeman Jenrette, a local physician, was called in.

My arm was swollen and I was suffering chest pains so he advised my going to the hospital immediately.

I was in the hospital again in April of 1961. Inasmuch as I was subject to dizziness and being unsteady on my feet, I did not drive up from  
131 Bedford to Washington, D. C. after the Easter holiday period but took the train instead.

On the way up, I became very ill with heavy chest pains and tremendous whirling (a type of vertigo, perhaps) and was taken from the train by

ambulance to the Washington Sanitarium and Hospital by a Wheaton, Maryland, ambulance service of a public nature.

Here, Dr. Clapp took care of me, and it was at this time that the radiologist discovered the hernia condition. I continued to grow worse and had to go to the George Washington University Hospital in February of 1962 and was there until March 12, 1962. I went especially to have the hernia repair done but first had to undergo an esophogoscopy, at which time the crico pharyngens area was ruptured, requiring drainage.

I did return on May 8, and was in the hospital from that time until June 10, 1962, at which time I personally maneuvered a transfer to the Washington Sanitarium and Hospital for two weeks. I had a trying staphylococcic infection in my abdomen which required antibiotics for control.

George Washington University physicians refused to order the antibiotics for me. One of the first things that Dr. Charles Wolohon did at the Washington Sanitarium and Hospital was to place me on antibiotics. It took about two weeks for the condition to clear up. For a portion of the time  
132 I was in isolation.

It seems as though the infection was contracted at the George Washington University Hospital due, maybe, to the lack of cleanliness on the part of someone handling equipment. A tube in my abdomen did not seem clean but that may have been due to its having much use over many months.

There were two tracheotomies, one on May 8 and the second on May 18. I left the Washington Sanitarium and Hospital on June 24 and entered the Bedford Memorial Hospital in Bedford, Virginia, where I stayed until July 2, 1962.

Needless to say, I think that 1962 and 1963 have been the most rugged period of my life. My recovery has been slow and I am still full of pain."

MR. MURPHY: That's the end of that portion of the answer.

BY MR. STEWART:

Q. (D) "Were you confined to your home on account of said injuries and if so, from what date until what date were you so confined?" A. "Yes,

I was confined in my home on account of said injuries. December 26 and 27, 1960, was spent in bed at the Manor House on the Three Otters Estate. The second week in January of 1961 at 1435 Holly Street, Northwest, Washington, D. C. Also, I was at 1435 Holly Street, Northwest, Washington, D. C. from  
 132 March 12 to March 31, 1962 (after the esophageal accident at GWUH).

Then from April 1, 1962, until May 8, 1962, from the time I returned to the George Washington University Hospital with a hernia operation, I was at the Bedford, Virginia, address.

Since July 2, 1962, I have been at the Bedford address, with the exception to time spent going to physicians' offices for additional treatment and consultation.

I did spend three days last October in the Bedford Memorial Hospital in traction to relieve the pain in the cervical spine.

Half of my time today is spent in resting or trying to overcome pain created by abdominal spasms and the holes in the diaphragm."

Q. (E) "Were x-rays taken of you subsequent to the injuries complained of? If the answer is 'Yes,' state the following: (1) the name and address of the person or institution taking same; (2) the date and place where each of said x-rays were taken; (3) the part or parts of the body of which x-rays were taken; (4) condition revealed by each x-ray; (5) the cost of each x-ray." A. "Many x-rays were taken.

(1) Washington Sanitarium and Hospital, Tacoma Park, D. C., January 1961; April, 1961; and January, 1962.

(2) Bedford Memorial Hospital, Bedford, Virginia, December, 1960; January, 1961; November, 1962.

(3) George Washington University Hospital, Washington, D. C. (approximately 100 x-rays were made) February, May, and June of 1962.

X-rays of the following were made: (a) elbow, (b) throat, (c) chest, (d) abdomen, (e) arm (right), (h) spine (cervical and lumbar).

(4) It would be difficult for me to know exactly what condition or conditions were revealed even though I have seen the x-rays and the report. I know that the gastro-intestinal x-rays with barium led the radiologist in January

of 1961 to suspect a diaphragmatic hernia. X-rays of the same area in April, 1961, at the Washington Hospital in Tacoma Park, D. C., with perhaps better equipment, revealed a hernia condition.

In connection with throat x-rays, it was found that swallowing was difficult after the esophageal accident because of a pus condition which developed. This had to be drained for more than two weeks because infection had set in.

There were scores of chest x-rays, some of which revealed the stomach's going up into the lung cavity. It had been difficult to inflate the lung after it collapsed.

Some of the chest x-rays revealed considerable fluid collecting, and  
135 this had to be drawn out by very long sharp needles. I was having trouble breathing.

X-rays of the abdomen, which I have seen, indicate that a sizeable portion of my stomach was removed when the gas gangrene set in. The wedged-shape of the removal is discernible.

X-rays of the spine revealed strains and severe whiplashing injuries.

(5) I do not know the exact cost of these x-rays but estimate \$5.00 each."

MR. MURPHY: The next is F.

BY MR. STEWART:

Q. (F) "Have you, your attorney, or anyone on your behalf received from any physician who has treated you a written report as to the nature of your injuries, treatment or prognosis. If the answer is 'Yes,' state the name and address of each physician." A. "Yes. Physicians who should have information are Dr. Freeman Jenrette, Bedford, Virginia; Dr. W. V. Rucker, Bedford, Virginia; Dr. Richard Clapp, Zephyr Cove, Nevada (formerly of Washington Hospital, Tacoma Park, D.C.); Dr. Brian Blades, George Washington University Hospital, Washington, D. C.; Dr. Cushing, another assistant; Dr. Silva, a surgery intern; Dr. Charles Wolohon, Washington Hospital, Tacoma Park-D.C.;

136 Dr. K. C. Walton, Main Street, Bedford, Virginia; Dr. Maurice Herzmark, 1616 Eighteenth Street, N.W., Washington, D. C.; Dr. Henry A. Monat, LaSalle



Hotel, 1028 Connecticut Avenue, Northwest, Washington, D. C."

MR. MURPHY: That's the end of that answer.

MR. STEWART: Interrogatory Number 12.

BY MR. STEWART:

Q. "If you claim, as a result of the injuries referred to in interrogatory number 10, that you obtained medical or surgical care or attention, state the following: (a) the name of and address of each physician who treated you."

MR. STEWART: Mr. Murphy, is the answer broken down into (a), (b), and (c)?

MR. MURPHY: Yes, it is.

MR. STEWART: All right. Then I'll stop there with (a).

BY MR. STEWART:

Q. "(a)." A. "Dr. Freeman Jenrette, Bedford, Virginia; Dr. Richard Clapp, Zephyr Cove, Nevada (formerly of the Washington Hospital, Tacoma Park, D. C.); Dr. Brian Blades, George Washington University Hospital, Washington, D. C.; Dr. Paul Atkins; Dr. Cushing, assistant to Dr. Brian Blades; Dr. Silva, surgery intern. I am not quite sure of his part in the whole situation. 137 He did dress the throat wounds several times. Dr. Charles Wolohon, Washington Hospital, Tacoma Park, D. C.; Dr. W. V. Rucker, Bedford, Virginia."

Q. "(b) The date or dates when said treatment was given and the locations." A. "December of 1960 and January 1961, Jenrette, Bedford, Virginia, Bedford Memorial Hospital; also some office visits and some correspondence relative thereto in Bedford, Virginia; January, 1961, and April, 1961, Washington Hospital, Tacoma Park, D. C. (Clapp); January, 1962, Washington Hospital, Tacoma Park, D. C. (Clapp); February, 1962, George Washington University Hospital, Washington, D. C. (Atkins); May, 1962, George Washington University Hospital, Washington, D. C. (Blades), (Atkins?), (Cushing); June 10, 1962 Washington Hospital (Wolohon); June 25, 1962, Bedford Memorial Hospital, Bedford, Virginia (Rucker).

I still owe Dr. Brian Blades \$32.00 which I hope I can pay before very long. The charges seemed exorbitant."

MR. MURPHY: And that's the end of that.

BY MR. STEWART:

Q. "(c) An itemized statement of any monies paid or owed as a result of the treatment afforded you by each of said physicians or surgeons."

A. "Financial statement will be supplied soon. Estimated \$7,500.00 plus cost of medicines."

138 Q. "13. State in detail all treatments, services, or medications received in connection with medical treatment not referred to in interrogatories numbered 11 and 12, and for each state the following: (a) the names of the persons or groups."

MR. STEWART: Is the answer broken down again?

MR. MURPHY: Yes, sir.

MR. STEWART: All right, sir, I'll stop there.

A. "(a) Dr. K. C. Waldon, Main Street, Bedford, Virginia; Dr. Edgar Weaver, Professional Building, Roanoke, Virginia; Dr. Lewis Ripley, Third Street, Southwest, Roanoke, Virginia; Dr. Maurice Herzmark, 1616 Eighteenth Street, Northwest, Washington, D. C.; Dr. Henry A. Monat, 1028 Connecticut Avenue, Northwest, Washington, D. C."

Q. "(b) The dates when such treatment or medication was given."

A. "From November 4, 1962, up until the present time—1964, and continuing. Over \$3,000.00 has been paid for such treatment and medication."

Q. "(c) An itemized statement of any monies paid or owed as result of said treatment or medication." A. "Approximately \$200.00 is now owed to the Mile Drug Company, Bedford, Virginia."

\* \* \* \* \*

139 Q. "13. (d) Describe each medication taken and its cost to you."

A. There is no answer to that part.

Q. "14. State whether you have received any nursing services or domestic assistance as a result of the injuries referred to in interrogatory number 10. If the answer is "Yes," state the following: (a) for each such service rendered, state the name, address, and telephone number of the person so employed."

A. "(a) I do not remember at the moment but do have the information in

my files somewhere. Since being hurt, I find myself quite behind in my filing of records and general information."

- 140 Q. "(b) State for each person the nature of the service rendered and the date or dates when said service was afforded you." A. "(b) Yes, I did have domestic help, when I returned to Bedford from the three hospitals listed heretofore.

April, 1962, Mrs. Harry Sharp (Bernice), R.F.D. 2, Bedford, Virginia;

July and August, 1962, Mrs. Harry Sharp (Bernice), R.F.D. 2, Bedford, Virginia;

From mid-October, 1962, Maynard Cash, R.F.D. 2, Bedford, Virginia; he is now living in Salem, Virginia, with his family.

From September, 1962, up until August, 1962 (sic), Mrs. William Carpa (Alma), Bedford, Virginia, R.F.C. 3.

From October, 1962, up until the present time, he gives a day or two now and then for a few hours to help with chores which I am unable to do."

MR. MURPHY: The last statement refers across the page to "Homer Luther, Airman, at 649th Radar Squadron, Air Force Base, Bedford, Virginia."

"1962, 1963, and a part of 1964, Mrs. Madge Robinson, R.F.D. 2, Bedford, Virginia. Her help is occasional help when other people cannot come. (She lives at Fancy Farms, the wife of my husband's tenant helper).

MR. MURPHY: That's the end of the answer.

BY MR. STEWART:

- 141 Q. "(c) State in detail the monies paid to or owed to each of said individuals as a result of the services rendered and state whether payment was made by cash or check and the dates of payment in each instance."

A. "Payments are usually made by check so as to have a record for the Bureau of Internal Revenue and for our own records. I have all of the cancelled checks, but it is a tremendous chore just now to get them all together.

I could send the 1963 cancelled checks after I finish the income tax records for 1963; and then, at a later date, send the others. I am so weak and ill it is quite a chore physically to do any type of clerical activity for at least an hour a day.

Please try to understand that I do want to cooperate to the fullest degree. With the recurrence of a hernia condition, it is likely that another operation is imminent. If I have to undergo another one soon, I feel definitely that I am doomed. My heart and general physical condition certainly could not take it.

The domestic workers who have been employed and are employed now are usually paid once a week, either on Friday or Saturday, or whatever the last day is during the week they work. An occasional worker may be paid on that particular day or at the end of the month.

- 142 The wages for domestic workers range from sixty cents to seventy-five cents per hour. Gardeners and general handymen are paid \$1.25 and \$1.00, depending upon what is being done.

I really need a full-time maid and a full-time gardener but haven't the money to pay the person or persons. I do have to rely on men who know how to work in the house to undertake some of the hard tasks, and they are paid \$1.00 an hour usually.

Q. "15. State whether you have ever been physically or mentally ill or suffered any other physical disability or injury prior to or subsequent to the date of the occurrence mentioned in the complaint. If the answer is "Yes," for each disability state the following: (a) the nature of the disability and the date or dates during which such disability existed." A. "Yes, I have been physically ill and have suffered other physical disabilities and several injuries. They are as follows:

(a) 1933, tonsillectomy. This had to be performed before I could qualify to teach in the District of Columbia. I don't recall the name of the physician. It will probably be on the school record.

1935, (inaudible) benign tumor, Jamaica Hospital, Jamaica, New York, Dr. Marlowe P. Bate, Richmond Hill, New York.

- 143 1939, accidental fall from chair at Calvin Coolidge High School. I fell forward as I pulled the chair along with me, and the heavy back of the chair fell on top of me and the bottom of it pushed me forward to a degree, injuring

my shoulder and neck and some of the nerves, perhaps. I was treated by the U.S. Public Health Service.

1944, birth of my son, Edmund Marsh T. Monberg, Guggenheim Memorial Maternity Hospital, Lynchburg, Virginia. I experienced, as usual, a convulsive reaction to medication. The experience was a rugged one for me. Dr. S. E. Ogglesby was the physician in charge. He suggested a year away from professional activity, which I was not able to achieve economically.

1952, while riding on a Southern train from Washington, I was injured when thrown forward while in the small toilet room. My head struck the sharp point of a metal vial, containing ice and water for drinking, and I suffered a concussion and, as a result, I was uncomfortable for about two years. I was treated in several hospitals and had several physicians, but I do not remember their names. They probably would be available in the school records inasmuch as I had to be away from school for the treatments and tests.

1954, hemorrhoidectomy and fistula operation, Washington Hospital, Tacoma Park, D. C.; Dr. Braunsberger, now retired and living somewhere else, I believe.

144 1960, October 31, accident; Dr. Freeman Jenrette looked after me after this accident.

On April 10, 1961, I was hospitalized at Washington Hospital with heavy vertigo attacks for a whole week. Too, there were such heavy chest pains they thought I was suffering a heart attack. I learned later that pain resulting from a ruptured diaphragm is similar to heart pains. Dr. Richard Clapp looked after me at this time.

1961, November 14, 1961, my car skidded on wet leaves which had not been swept up by the City of Washington on the morning of November 14, 1961, and I accidentally hit a tree. I was traveling on a one-way street, Crittenden, Northeast, on my way to Eastern High School for the day. The whole front of the car had to be replaced, and I was again hurt physically in somewhat the same fashion in which I was hurt when my car struck a concrete island, which was not visible in the rain until I was upon it, in October of 1960. Might say I was re-hurt. This happened on a Tuesday morning, as I recall; and

as I became more and more ill, I realized that I should see a physician. On Sunday morning, therefore, I went to the Washington Hospital in Tacoma Park where Dr. Morrell Quinstadt examined me and recommended therapy of a heat nature. He diagnosed the injury as a weak whiplash but did not suggest x-rays.

145 1962, I was hurt in an accident while riding as a passenger with a friend to church on November 4, 1962. A young man in his teens, not looking where he was going, rammed the station wagon in which I was riding, breaking the springs in the seats in the front, hurting both of us—or, rather, re-hurting me along with hurting my friend, Miss Bernice Lillian Shook. I have had medical care and treatment ever since this happened. The names of the physicians have been given previously. X-rays were taken at the Professional Building in Roanoke, Virginia, and in Dr. Maurice Herzmark's office in Washington, D. C., and in Dr. Henry Monat's office at 1028 Connecticut Avenue, Northwest, Washington, D. C. Also, some were taken at the Bedford Memorial Hospital, Bedford, Virginia.

1963—fall at Evans Mill Farm Inn. Falls Church, Virginia, on July 17, 1963. I was treated first at Sibley Hospital that evening and later in Bedford, Virginia, by Dr. K. C. Waldon. Some gravel imbedded itself in my upper lip, in my nose, and cheek. The bone in the knee was bruised. Additional x-rays were made by Dr. Maurice Herzmark, at which time he found a blood clot on the right kneecap. X-rays were also made at the Bedford Memorial Hospital, but I have never been sure of their interpretation. There had been times when they have missed important things.”

MR. STEWART: “15 (b).”

MR. MURPHY: Pardon?

146 MR. STEWART: You’ve just read 15 (a)?

MR. MURPHY: Oh, I’m sorry. I must have run on. Yes, I did. That’s all there is to (a), but there is no (b) in the answer.

MR. STEWART: Is there a (c)?

MR. MURPHY: No, sir.

MR. STEWART: Or a (d) or an (e) to that question?



MR. MURPHY: No, sir. The next one is 16.

BY MR. STEWART:

Q. "16. With respect to the occurrence set forth in the complaint, state the following that may be known to you: Your agents, such attorneys, insurers, or others in privity with you. Sub-section 1: Set forth in detail all facts upon which you believe the District of Columbia was negligent and which contributed to the occurrence complained of. A. "1. See the allegations of

the complaint, which I adopt here. Also, failure to provide a traffic officer in this dangerous area; failure to turn the lights on despite the poor visibility and the rain; failure to supply signs, blinkers, reflectors, lights, or other warning signals to indicate presence of the concrete island and to warn motorists of its position; failure to provide signs along the detour to warn the motorist that

147 the path of the detour was unusually narrow and curving with the concrete island in its path."

MR. STEWART: Interrogatory Number 20.

BY MR. STEWART:

Q. "State whether you or any member of your family has ever made claim against or filed a lawsuit against anyone claiming damages for either personal injuries or property damages, sustained from any cause whatsoever. If the answer is "Yes," give full particulars as to name and address of the person against whom the claim or lawsuit was made, the place where made, the date of the occurrence giving rise to the claim, and full particulars about such occurrence." A. "Not to my knowledge, so far as anyone excepting myself is concerned.

I personally went to the Southern Railroad for injuries caused by sudden stopping of the train without calling stations as required by law."

MR. MURPHY: The notary acknowledgement of November 3, 1964, and the filing date in this court was November 28, 1964.

BY MR. STEWART:

Q. "Do you have . . .

MR. STEWART: Did Your Honor have something?

\* \* \* \* \*

## AFTER RECESS

[The Court reconvened at 11:25 A.M.]

[The jury resumed the jury box.]

THE COURT: You may proceed when you are ready, Mr. Stewart.

MR. STEWART: Thank you, Your Honor.

I believe I asked you, Mr. Murphy, the date — perhaps I didn't — the date of filing those answers.

THE COURT: You did, sir, and it was 11/26/64.

MR. STEWART: Thank you, sir.

In this same file, that is, Mrs. Sitwell versus the District of Columbia, thereafter appears a recommendation of the pre-trial examiner that additional answers be filed to certain interrogatories.

BY MR. STEWART:

Q. "Number 8. State whether any health or accident insurance monies are now being paid or have been paid to you for (a) prior injuries. A. "No."

Q. "(b) the injury which is made the basis of this lawsuit. If the answer is "Yes," state the following: (1) The name of the company or organization paying such money, (2) Describe such injury for which said payment or payments are being made, and (3) In each instance, state the date and the location of the occurrence of said injury and the details surrounding this occurrence."

A. "(b) (1) I have the regular Government indemnity insurance under the plan developed by the Aetna Insurance Corporation. That company paid and is still paying under the 202 Family Arrangement, approximately eighty percent of the hospital bills.

In the case of hospital board and room, Aetna paid up to \$1,000.00, with all other charges eighty percent of the sum total after the usual \$150.00 deductibles.

(2) Each injury for which Aetna paid expenses involved: First, October 31, 1960, when car struck an unlighted, unmarked, and unpoliced island in pathway of roadway used for traffic while storm sewers were being

installed at the intersection of Mount Olivet and Bladensburg Road, Northeast.  
(6:25 P.M. EST 1960)

Second, December 13, fall forward at the Anacostia High School as a result of continued dizziness (residual, perhaps, of concussion suffered October 31, 1960). Medical literature carried statements to the effect that a ruptured diaphragm where a hernia exists can create vertigo. In fact, there are some very special magaizne articles to this effect. It might be well to state  
150 that the floors at Anacostia High School were highly waxed during the Thanksgiving recess. These, combined with snow and slush and vertigo were just too much."

MR. MURPHY: Off to the left of that is the time.

MR. OLENDER: Your Honor, if the Court please, we move to strike that under our previous objections to Collateral source material.

THE COURT: All right, sir. I understand that.

THE COURT: You may proceed, sir.

MR. MURPHY: "Third, December 16, 1960, a fall on . . .

THE COURT: Excuse me, Mr. Murphy.

THE COURT: For this purpose, only, I'm ruling. Of course, you understand, only to the release.

MR. OLENDER: I'm sorry, Your Honor, I didn't hear you.

THE COURT: I say I'm overruling your objection for this purpose only, namely, as to the release, of course.

MR. OLENDER: Yes, sir.

MR. MURPHY: "Third, December 16, 1960, a fall on unsanded icy streets, while waiting for a bus at the corner of Alaska Avenue and Kalmia Road. (7:30 P.M., 1960)

The continued dizziness from vertigo made my unsteady on my feet."

151 THE COURT: Would you give me that date again, please.

MR. MURPHY: It's just the time, 7:30 P.M., 1960.

THE COURT: I am speaking of the icy street. What was the date of that, sir?

MR. MURPHY: Oh, I'm sorry. December 16, 1960.

THE COURT: Thank you.

MR. MURPHY: "Fourth, November 14, 1961, when car was traveling on one-way Crittenden Street, a rerouting for North Capitol Street, which was under repair, car skidded on uncollected wet leaves. I could not then control the car, no matter how hard I tried, and I hit a tree with a heavy wallop, despite the fact that the car was slowed to within 10-15 miles per hour. I was on my way to Eastern High School."

MR. MURPHY: Off to the left of that is 8:15 A.M., 1961.

Fifth, November 4, 1962, when car in which I was a passenger was waiting for another car to pass in the opposite direction to turn into the St. John's Church parking area, at which time a teen-age boy, looking at a friend on the sidewalk and waving at him came dashing into the station wagon, apparently without even knowing there was a vehicle in front of him. He was convicted of reckless driving and his permit taken away from him for a year. Previously, he had been charged with drag racing on the highway.

152 As a result of this accident, a slowly healing internal tissue was torn loose and the diaphragm ruptured again with the stomach coming through the diaphragm as before after the first accident in October of 1960."

MR. MURPHY: Off to the left of that writing appears "Bedford, Virginia, 11:12 A.M."

"Sixth, due to continuing weakness in the right knee and leg as a result of the accident in October of 1960, in November of 1961 and November of 1962, I slipped and fell over my rather large brown purse. The walk extended in a semi-circle from brick into blacktop and there wasn't enough light for me to distinguish the walkway and the blacktop from the parking lot, repaired with the same material. It was a difference in height of about six inches.

The accident in November of 1962 could have been contributory. Also, as mentioned heretofore, in that I was rehurt very badly as I was thrown against the windshield and the right side of the car and my right arm and leg rehurt. At this time, too, I was still suffering with some dizziness, actually,

what the physician termed 'vertigo', carry-over from the October 31, 1960 injury.

153 Ever since the 1960 accident, I am somewhat unsteady on my feet and have lessened strength in my right arm and leg. I am forever dropping and breaking dishes, spilling liquid substances, and moving less gracefully than before."

MR. MURPHY: And off to the left of that is "Falls Church, Virginia, July 17, 1963, 10:00 P.M., Evans Mill Farm Inn courtyard."

"(3) I think I have covered all of the accidents reasonably well but wish to give additional information about the October 31, 1960, accident, which occurred at the intersection of Bladensburg and Mount Olivet Roads, Northeast.

I was driving from the Anacostia High School rather late on the evening of October 31, 1960, after some young high school students with speeches in preparation for speech contests they were entering - American Legion and Voice of Democracy. The day, as I recall, had been an overcast one with intermittent showers.

When I left the Anacostia High School around 6:10-6:15 P.M., there was a somewhat driving fine cold rain coming down. It seemed to increase as I drove along slowly, making visibility difficult.

The day was a Monday and I had just brought the Dodge car up from Southern Virginia the day before with the idea of securing District license plates in addition to the Virginia ones. The wind was out of the east northeast at 6.9 miles per hour, which means that it was driving rain into me in the direction in which I was going home; that is, the rain was against the windshield in full force.

154 Even though my own lights were on, the rain added to my difficulty in seeing the concrete island in time to avoid going on top of it. Had there been lights, a sign or signs, or a policeman to direct traffic over this narrow passageway, I am sure I could have avoided striking the island. It must be borne in mind that when one strikes a stationary object of hard substance,

the impact, from the standpoint of force, is approximately doubled. Such an impact would add or contribute to the amount of pressure exerted when one's chest is thrown against the steering wheel, also, to the degree of pressure of the head against the top of the car as the car was jolted and settled.

The concrete island caught the frame of the car as it settled on top; and, as a consequence, the jolt was probably much harder than it would have been had the car gone over the top of the concrete island without being stopped suddenly."

MR. STEWART: That was the supplemental answer to number 8?

MR. MURPHY: Yes, sir.

BY MR. STEWART:

Q. "Number 9. State whether you are now receiving or have ever received in the past any Federal, State, or District of Columbia benefits for disability, unemployment, or retirement benefits of any nature."

155 MR. OLENDER: The same objection, if Your Honor please.

THE COURT: Yes, sir.

BY MR. STEWART:

Q. (continuing the previous question) "If the answer is 'Yes,' state the following: (a) Describe each benefit received. A. "9. Yes.

(a) Disability retirement, as of June 30, 1962.

The amount received is a little more than the third of the salary I would be receiving were I able to work; and I wish I were able to teach again because I do enjoy it."

Q. "(b) For each instance, state the name and the Government paying such benefits." A. "District of Columbia."

Q. "(c) For each instance, state when said benefits were first received and if said benefits are still being received at the present time."

A. "October, 1962: Benefits are still being received."

Q. "(d) If benefits are not being received presently, state the date when payments ceased being made by a particular Government."

MR. MURPHY: There is no reply.



BY MR. STEWART:

156 Q. "Number 10. As a result of the incident referred to in the complaint, . . ."

MR. MURPHY: Excuse me, Mr. Stewart. There is no further answer to 10 in the supplemental answers.

MR. STEWART: There are none.

BY MR. STEWART:

Q. "11. If you claim you have been treated at any clinic, hospital, or nursing home for any of the injuries referred to in interrogatory number 10, state the following: (a) the names and addresses of each of said establishments."

A. (a)

1. The Washington Sanitarium and Hospital, Tacoma Park, D.C.
2. The Bedford Memorial Hospital, Bedford, Virginia.
3. The Washington Sanitarium and Hospital, Tacoma Park, D.C.
4. The George Washington University Hospital, Washington, D.C."

MR. MURPHY: And that is repeated again: "The George Washington University Hospital, Washington, D.C.

- "5. The Washington Sanitarium and Hospital, Tacoma Park, D.C.
6. Sibley Hospital, Washington, D.C.
7. The Bedford Memorial Hospital, Bedford, Virginia."

157 Q. "The day of admission and when you were discharged from each."

A. "The Washington Sanitarium and Hospital, Tacoma Park, D.C.

Outpatient, November 2 and 6, 1960

Dr. Richard Clapp

The Bedford Memorial Hospital, Bedford, Virginia

December 27, 1960 - January 10, 1960.

Dr. Freeman Jenrette

The Washington Sanitarium and Hospital, Tacoma Park, D.C.

April 10 - April 18, 1961.

Dr. Richard Clapp

The George Washington University Hospital, Washington, D.C.

February 18, 1962 – March 12, 1962.

Dr. Atkins

The George Washington University Hospital, Washington, D.C.

May 7, 1962 – June 10, 1962.

Drs. Blades, Atkins, Cushing, Silva

The Washington Sanitarium and Hospital, Tacoma Park, D.C.

June 10, 1962 – June 24, 1962.

Dr. Charles Wolohon

158

The Bedford Memorial Hospital, Bedford, Virginia

June 25, 1962 – July 2, 1962.

Dr. W. V. Rucker

Sibley Hospital, Massachusetts Avenue, Northwest, Washington, D.C.

Outpatient, July 17, 1963, for bandaging of knee and medication.

The Bedford Memorial Hospital, Bedford, Virginia

October 23 – October 26, 1963

Dr. K. C. Waldon (on advice of Dr. Lewis P. Ripley)

I have been in the Bedford Memorial Hospital, Bedford, Virginia, on an emergency basis several times, once when I was hurt on the Sunday in November of 1962 and was examined by Dr. Waldon, and again when I had unusual difficulty with my knee. It seemed to continue to bleed without reason. This was a result of the fall in July of 1963."

Q. "An itemized statement of any monies paid or owed as a result of treatment afforded you at each of these establishments."

A.	"The Bedford Memorial Hospital of Bedford, Virginia	\$261.00
	Bedford, Virginia	
	Dr. Freeman Jenrette, Bedford, Virginia	No sum stated
	The Washington Sanitarium and	
	Hospital	\$263.00
159	Dr. Richard Clapp	No sum stated
	The George Washington University Hospital.	\$3,221.97

Drs. Brian Blades, Atkins, Cushing	\$845.00
The Washington Sanitarium and Hospital	\$435.00
Dr. Charles Wolohon	\$74.00
The Bedford Memorial Hospital	\$156.50
Dr. W. V. Rucker	\$45.00
Sibley Hospital Outpatient Clinic	\$7.00
The Bedford Memorial Hospital	\$72.70
Dr. K. C. Waldon —"	

MR. MURPHY: I cannot tell from this actually which the \$72.70 applies to. One is above the line and one is below and only one amount is dated the \$72.70.

A. (continued)

"Prescription drugs since 1960	\$3,000.00
Registered nurses fees	\$2,200.00
Travel to see physicians and to hospitals	\$269.28"

MR. STEWART: Is that the extent of the answers, supplemental answers, to Interrogatory Number 11?

MR. MURPHY: That's right.

\* \* \* \* \*

MR. STEWART: May I have the jacket in this lawsuit, Your Honor.

[The Deputy Clerk hands Mr. Stewart the file.]

MR. STEWART: Subject to the permission of the Court, I would propose to read from a portion of the pretrial statement in this case of specifically of the itemization of the out-of-pocket expenses and losses claimed by Mrs. Sitwell in this suit against George Washington University Hospital and Dr. Brian Blades and the nature of the injuries which she claims in this lawsuit.

\* \* \* \* \*

MR. STEWART: I will read from the pre-trial order entered in the case on the date of February 3, 1969. I will read first the statement of the nature of the case:

"Damages for personal injuries due to negligence (mal-practice).

The parties agree to the following statement of facts and stipulate thereto:

The plaintiff was hospitalized at the George Washington University Hospital from February 18 to March 11, 1962, and subsequently, on May 7, 1962. She was readmitted to the hospital where on May 8, 1962, under general anesthesia, she was operated on by the defendant, Dr. Brian Blades, who specialized in surgery in the Washington, D.C. area. The operation was a modified Allison hiatal hernia repair.

On May 18, 1962, plaintiff was again operated upon by Dr. Blades, undergoing repair of post-operative herniation of the stomach by counter-incision in the diaphragm, with necrosis of a portion of the stomach wall.

162 On or about May 25, 1962, the plaintiff was transferred to the Psychiatric Ward of the defendant hospital and she was discharged on June 10, 1962."

MR. STEWART: Turning now to page 2 of the pretrial order.

[Pause]

MR. STEWART: I'm sorry. Page 3 of the pretrial order, Your Honor.

"Plaintiff has never fully recovered." . . .

MR. STEWART: This is under the claim of the plaintiff as distinguished from the agreed statement which I previously read to you.

"Plaintiff has never fully recovered from such surgery, . . ."

THE COURT: From what, sir?

MR. STEWART: "From such surgery, . . ."

THE COURT: I see. Thank you.

MR. STEWART: ". . . still suffers gastric pain, is required to remain on anti-spasmodic medication and her condition appears to be permanent due to her age.

Although she has applied for re-employment as a teacher in the D.C. Public School System, she has been unable to secure a position as a teacher and has felt wise to supplement her disability retirement with occasional journalistic attempts at writing.

163 She asserts that she was injured and damaged as a result of the negligence of the defendants for their violation of hospital bylaws and rules of the Joint

Commission on Hospital Accreditation."

MR. DAVIS: I think he should complete the sentence. Your Honor.

THE COURT: Sir?

MR. DAVIS: I think he should complete the sentence where it says, "as follows." He's leaving it up in mid-air.

MR. STEWART: No, I wasn't leaving anything up in mid-air. I understood Your Honor to indicate that anyone of us could read what we chose from any document.

THE COURT: That is right. You certainly shall be accorded that privilege, also, Mr. Davis.

MR. STEWART: Attached to . . .

THE COURT: Let me say this: If you would like to do that at this point in this case, Mr. Davis, you may do so.

MR. DAVIS: All right, Your Honor. I think it should be read in sequence.

MR. DAVIS: Ladies and gentlemen, Mr. Stewart has just read this paragraph:

"She asserts that she was injured and damaged as a result of the negligence of the defendants for their violation of hospital bylaws and rules of the Joint

164 Commission on Hospital Accreditation, as follows:

As to defendant hospital:

pushing and mishandling the patient post-surgically; insisting that plaintiff patient walk when she was in a debilitated condition following surgery; permitting the nursing staff to place plaintiff patient in a Trendelenburg position for rotation following surgery; furnishing plaintiff patient with solid diet following such surgery contrary to physician's orders; permitting plaintiff patient to remain unguarded and unattended following surgery; abandoning plaintiff patient as described above; allowing plaintiff patient to be transferred to the Psychiatric Department

for no valid medical reason;

failure of its medical staff to properly and adequately supervise plaintiff patient's post-surgery;

permitting plaintiff patient to develop a staphylococcus aureus infection in failing and refusing to promptly administer anti-biotics to counteract same;

permitting nurses' aides and other hospital employees to keep plaintiff patient constantly awake at night to discuss her personal affairs when she required rest and quiet;

165 failure of the nursing staff to check the plaintiff patient's post-operative condition more often, particularly while she was under the effects of anesthesia; the hospital's violation of its own bylaws and rules of the Joint Commission on Hospital Accreditation.

As to Doctor Blades:

departure from accepted surgical procedures for this type of surgery on the basis of the following:

in failing to properly determine plaintiff patient's condition post-operatively and particularly to discover the staphylococcus aureus infection and to properly administer anti-biotics for the correction and alleviation of same;

in failing to make proper and sufficient tests to determine and diagnose plaintiff patient's true condition, namely, no x-rays post-operatively;

in ordering excessive medication by drugs when he knew, or should have known, the plaintiff patient's history of drug reaction;

and in leaving foreign objects in plaintiff patient's anatomy following such surgical procedures and in failing to direct same and in failing to remove same."

MR. DAVIS: That's all I have, Your Honor.

\* \* \* \* \*



[Pause]

THE COURT: I think that you ladies and gentlemen understand the statements that were said by Mr. Stewart; these are the claims of the plaintiff as to the matter which will be made if and when the trial will be held before a jury.

You may proceed, Mr. Stewart.

MR. STEWART: Attached to the pre-trial order of the court, and therefore, an unnumbered page, but as a part of the pre-trial order, there is listed the bills and expenses entitled "Special Damages Claimed by the Plaintiff" in this suit which we are referring to.

"George Washington University Hospital 2/18/62 to 3/11/62	- \$1,111.65
George Washington University Hospital 5/7/62 to 6/10/62	- 2,592.15
Washington Sanitarium and Hospital 6/10/62 to 6/25/62	- 552.36
Bedford County Memorial Hospital 6/25/62 to 7/2/62	- 136.50
Dr. Charles Wolohon, Washington Sanitarium Hospital	- 71.00
DR. W. V. Rucker, Bedford Memorial Hospital	- 32.00
Dr. Henry A. Monat, 1028 Connecticut Ave- nue, N.W.	- 280.00
Dr. Andre Barrabini, 1028 Connecticut Avenue	- 150.00
Dr. Phil Trimmer, Richmond, Virginia	- 41.00
Dr. Charles Caravatti, Richmond, Virginia	- 40.00
Medications for the six years at approximately \$2,000.00 per year	- 12,000.00
Travel expenses between Bedford, Virginia, and Washington, D.C. for the purpose of see- ing physicians (mileage, hotels, etc.)	- 1,000.00

Amount paid to Dr. Blades for unsuccessful surgery	— 835.00
Estimated medication to age 70	16,000.00
Estimated expense of surgery for removal of foreign objects	— 1,000.00
Estimated hospitalization for such surgery	— 500.00
	<hr/>
<b>TOTAL</b>	<b><u>\$35,841.66</u></b>

MR. STEWART: If Your Honor please, I would like to ask Mrs. Sitwell to take the stand under Rule 43(b).

THE COURT: Please take the stand, Mrs. Sitwell.

**PHRONSIE IRENE MARSHA SITWELL**

plaintiff, called as a witness, having been duly sworn, was examined and testified as follows:

168

**DIRECT EXAMINATION**

BY MR. STEWART:

Q. Mrs. Sitwell, you are Mrs. Phronsie Irene Marsha Sitwell? A. Phronsie.

Q. All right.

\* \* \* \* \*

Q. And where do you presently live, Mrs. Sitwell? A. I suppose I could rightly say I am living in two places from time to time—Bedford and Washington, 1435 Holly Street, and Bedford, R.F.D. 2.

Q. Well, what do you call your home or place in Bedford? A. Three Otters Estate.

Q. Now, would you tell us, please, the extent of your formal education.  
A. Do you want only the college?

\* \* \* \* \*

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THE COURT: \* \* \* Now, what school did you go to after high school?

THE WITNESS: I went to Lynchburg College for two and a half years.

Is that . . .

MR. STEWART: Excuse me. I thought you were finished. Go ahead.

THE WITNESS: The University of Virginia one summer, 1925, I believe it was. Mary Washington College from 1926 to 1927. I received a B.S. Degree from Mary Washington College.

I then went to Columbia University for several summers, and then . . .

THE COURT: Is that in New York, Mrs. Sitwell?

THE WITNESS: Yes.

THE COURT: Thank you.

THE WITNESS: Then in 1932, I received a Master's Degree. Then, again, in . . .

MR. STEWART: May we ask from what institution did you receive the Master's Degree?

THE WITNESS: Columbia University in New York.

MR. STEWART: Thank you.

170 THE WITNESS: Then I attended New York University. I was a candidate for a Doctorate. I received a fellowship to that university and was there half a year.

I have also studied at the Institute on World Affairs in Switzerland.

I have had some training at George Washington University in administration of education and some history courses.

While I was in the West, I studied international law.

It seems to me there were thirteen different schools in all. I can't seem to recall them all.

I took some health training at the school at—I believe they call it Madison College now, down in Harrisonburg.

I suppose this wouldn't be formal education, but I did attend from time to time writers' conferences to help me with professional work.

BY MR. STEWART:

Q. Is it fair to say that you have the equivalent of a doctorate? A. I think so. I have more than thirty hours above the Master's Degree.

Q. All right. A. I suppose, perhaps, I should mention, too, that is, between '67 and '68, I did study again taking some courses in English literature  
171 with the idea of receiving another Master's Degree. I haven't finished that yet.

Q. Do you do a great deal of reading? A. Yes.

Q. Do you do a great deal of writing? A. Well, not as much as I like because of the time element, but I do write.

Q. Have you studied medicine? A. No. I've . . .

Q. Have you on your own investigated or read at length medical literature? medical paper? A. To some degree, yes.

Q. In connection with your own problems as well as general medical literature? A. Yes.

Q. Now, have you studied law? A. Yes, to some degree.

Q. And to what extent have you studied tort or negligence law? A. I haven't studied tort or negligence law.

Q. You have read some aspects of it? A. Yes.

Q. Now, Mrs. Sitwell, you heard me reading certain of the questions that had been directed to you in connection with both lawsuit in Baltimore, Maryland,  
172 in the Federal District Court, and also the lawsuit in this court against the District of Columbia, and your answers being read back to those questions?  
A. Yes.

\* \* \* \* \*

173 BY MR. STEWART:

Q. Mrs. Sitwell, you did institute a suit for your personal injuries suffered  
174 in that accident against the Southern Railway, did you not? A. Yes.

Q. All right.

That case was tried, was it not? A. Yes.

Q. Now, . . .

THE COURT: Keep your voice up, please. I think you said "Yes."

THE WITNESS: Yes.

BY MR. STEWART:

Q. Now, thereafter, as we know from the record, there had been the two suits arising out of the October 31, 1960, automobile accident—one in Baltimore, one in D.C., against Paramount and against D.C., both of which are now dismissed lawsuits. Is that correct? A. They were—dismissed.

Q. All right.

Now, in addition, there is still pending a lawsuit instituted by you against Government Employees' Insurance Company. Isn't that so? A. [Nods head affirmatively]

Q. Now, that's for the recovery of medical expenses incurred by you in connection with the accident of October 31, 1960? A. No.

175 Q. Which accident? A. November 14th only.

Q. November 14, 1961? A. Yes, only.

Q. That was the instance where while driving the automobile, your car was caused to skid on the wet leaves in the roadway? A. Yes.

Q. All right.

Now, you also instituted a suit against a Mr. Robert Clark Gill, Junior, in the Circuit Court of Bedford County, Virginia? A. Yes.

Q. Now, that stems from the accident of November of '62, following your return to Bedford after being hospitalized in the District and the lapse of a brief period of time? A. Yes.

Q. And that case was tried . . . A. Yes.

Q. . . . and in that case where the young man had driven the automobile into the rear of the car in which you were seated and which was operated by Mrs. Shook, you recovered a judgment, did you not? A. Yes.

176 Q. And you were claiming in that case that there was a rupture again of the diaphragm? A. Yes.

Q. All right.

Now, in addition, you also have pending at this time a lawsuit in the Circuit Court of Fairfax County, Virginia. . . A. Yes.

Q. . . . in which you are the plaintiff suing the defendant Evans Farm, Inc. for an accident which happened to you on the premises of this restaurant on July 17, 1963? Is that correct? A. Yes.

Q. Now, in the present suit against George Washington Hospital and Dr. Blades, your counsel is Mr. Davis. A. Yes.

Q. In the last-mentioned suit pending in Fairfax County against Evans Farm for the accident of July 17, 1963, your counsel is also Mr. Earl Davis. Is that correct?

Q. But in the suit against Government Employees' Insurance Company, Mr. Curtis filed that suit, did he not? A. Yes.

Q. All right.

177 And Mr. Curtis was the trial attorney in the suit tried in Bedford County, Virginia, involving the automobile accident of November '62? A. Mr. Boland Lambeth.

Q. Was Mr. Curtis there? A. Yes, he assisted him.

Q. He assisted him.

I understand that trial was held in the latter part of the month of April, 1965. Does that sound reasonably correct to you? A. I think the exact date was April 25th.

Q. Now, do you have a sister who is a physician, a psychiatrist?

A. Yes.

Q. And may I ask, please, where does—first of all, the doctor's name.

A. Dr. Jessie Marsh Enslin, E-n-s-l-i-n.

\* \* \* \* \*

178 Q. Mrs. Sitwell, in connection with your writings over the years, you have had some of those works published, have you? A. Yes.

\* \* \* \* \*

179 Q. In connection with seeking the publication of certain literary works on your part, would you on occasion enter into contracts with publishers?

A. No.

Q. Never did? A. Any contracts were verbal.

Q. Never any written contracts? A. No.

MR. STEWART: I believe that's all I would like to ask of Mrs. Sitwell.

THE COURT: Mr. Murphy?

MR. MURPHY: I have nothing, Your Honor.

THE COURT: Mr. Davis?



MR. DAVIS: Since I'm going to have the other half, I guess I might as well use her while she is on the stand, if you—if Your Honor please; but it's  
180 so close to the adjournment time . . .

THE COURT: Well, let's use the time. I looked, too, Mr. Davis, but let's use what we can, sir, and we will stop at 12:30.

### CROSS EXAMINATION

BY MR. DAVIS:

Q. Mrs. Sitwell, Mr. Stewart asked you about a suit against Southern Railway some twenty-two years ago in 1947. What was the outcome of that suit?

A. I lost it because . . .

Q. You had no occasion to sign a release in connection with that matter, did you? A. No.

Q. He also asked you about a Bedford, Virginia, accident which was tried in April of 1965. You stated that you did recover judgment in that case. You didn't have occasion to sign a release on that occasion, did you? A. I don't recall one.

Q. Your suit against GEICO, Government Employees' Insurance Company, you say it's still pending? A. Yes.

Q. You signed no release in connection with that matter? A. No.

181 MR. STEWART: If Mr. Davis has put on this other half that he spoke of, I think he should not be leading his own client.

MR. DAVIS: This is cross-examination.

THE COURT: I think this is cross-examination.

MR. DAVIS: Now, if Your Honor please, I would like to make the witness my own, now.

THE COURT: All right, sir.

MR. DAVIS: May I see Exhibit Number One, please, the release.

### DIRECT EXAMINATION

BY MR. DAVIS:

Q. Mrs. Sitwell, I show you what has been received in evidence as Defendant's Exhibit Number One, which is a release of the Paramount Construction

Company case in the U.S. District Court in Baltimore, by the terms of which the D.C. case was also concluded, that being a separate suit of the same accident in this jurisdiction.

That is your signature, is it not, on this release dated February 2, 1966?

A. Yes, it is.

Q. And you notice directly below that "Witnessed by Beatrice L. Shook, Route 2, Bedford, Virginia." Who is Miss Shook? A. Miss Shook is a Public Health nurse and is co-owner of business property with me.

182 Q. And she is here today in court, is she not? A. Yes, she is.

THE COURT: Co-owner of what, please?

THE WITNESS: I beg your pardon?

THE COURT: You said co-owner of something.

THE WITNESS: Oh, co-owner of business property.

BY MR. DAVIS:

Q. Who is J. S. McCauley, Jr., also listed R.F.D. 2, Bedford, Virginia, as a witness to this release? A. He is a grocer with a small store in Gould, Virginia, near Bedford.

Q. You say it's a small store. Is that, in fact, a one-man store? A. Yes.

Q. Does he have any employees? A. So far as I know, he doesn't.

Q. In other words, if he were to leave, he would have to close the store up? A. Yes.

Q. Mrs. Sitwell, when you signed this release on February 2, 1966, what was your intention with reference to your rights in signing that?

MR. MURPHY: If Your Honor please, I object.

THE COURT: Suppose you come to the bench.

[AT THE BENCH:]

\* \* \* \* \*

185 THE COURT: What I am trying to say, Mr. Davis, is that many things go into a case without objection and could well be recited by the Court in its review; but it doesn't have any legal potency unless it was made an issue and determined.

Frankly, I am having trouble with this intent. It looks to me that they were diametrically opposed to what you want.

It is my understanding that you are challenging, in other words, that the document, as made, is invalid, sir.

MR. DAVIS: Insofar as it is a contract between this plaintiff and Paramount Construction Company and the District of Columbia, insurer of Paramount, it is perfectly valid paper.

THE COURT: What I am trying to say, sir, is that, first of all, you are not claiming that in the adoption of this release there was any fraud or overreaching or anything of the sort; furthermore, that she was not coerced into signing that paper by anybody and that she did, in fact, sign that paper and that she was a competent person. Am I right?

MR. DAVIS: Yes, I . . .

186 THE COURT: So I do have difficulty and I certainly read your citation, but I ask the propriety of permitting a person to say after the fact what her intent was at the time of the fact. I'm hoping to be educated, sir.

MR. DAVIS: There is one case I did submit to Your Honor yesterday.

189 MR. DAVIS: As heard just before the recess, I had propounded the direct question verbatim as was propounded in the case of *Rudick versus Pioneer Memorial Hospital*, 296 Fed. Second, 216. "When you signed this paper, referring to Defendant's Exhibit One which has been handed to you, which is the release, what was your intention with reference to your rights in signing it?"

At that time, defense counsel made an objection, and we have been discussing the law ever since.

Now, in line with the proffer. If permitted to answer that question, Mrs. Sitwell would have stated that she intended to release Paramount Construction Company and the District of Columbia from any cause of action that she had against either or both of those defendants, growing out of an accident on October 31, 1960; that she had no intention whatsoever of releasing Dr. Brian Blades and George Washington University Hospital for any acts of mal-practice which occurred in 1962 at her one or more admissions into that hospital.

190 If she had any idea that this release would have automatically by operation of law release those defendants, she would have refused to sign this release of \$1500.00 and would have insisted upon trial of that action against Paramount.

THE COURT: I am going to admit it. I am going to admit it, though, with this understanding, gentlemen, that I have very, very serious doubt as to the propriety of the utterance which you speak; and I have found no case which decidedly is appropriate where there is any challenge for it.

I agree with you thoroughly that the case that you just read the questions were put and the answers were given along with a full statement. But I could find nothing in the case which indicated that that issue had been raised or any challenge had been made.

Now, you gentlemen preserve your point and I will certainly consider the propriety of a motion to strike if that be appropriate for whatever you gentlemen may determine best at the time.

MR. STEWART: By such direction or suggestion, Your Honor, are you indicating that we should or should not voice our objections as the questions are propounded?

191 THE COURT: Let me say this to you: I think I am informed to the degree that you do object to each and every one of the questions which have been indicated in the proffer, and that will be reflected on the face of the record and that will apply to both of you; and you gentlemen (referring to Messrs. Davis and Olender) understand that?

MR. DAVIS: [Nods affirmatively]

THE COURT: If it becomes necessary, I will certainly reconsider at a later point. We have some investment in this case and it may be that some of these things will resolve themselves; but if they don't, we can certainly pick them up again.

I assume you are ready, Mr. Davis?

MR. DAVIS: Yes, Your Honor.

\* \* \* \* \*

THE COURT: You may proceed, Mr. Davis.

PHRONSIE IRENE MARSHAL SITWELL

plaintiff, called as a witness, having been previously duly sworn, was examined and testified further as follows:

BY MR. DAVIS:

Q. Mrs. Sitwell, just before the luncheon recess, I showed you what has been received in evidence as Defendant's Exhibit Number One, the release, which is claimed as an affirmative defense. I ask you at that time, when you  
192 signed this paper which had been handed you, which is the release, what was your intention with reference to your rights in signing that? A. That I was releasing only the Paramount Construction Company and the District of Columbia.

Q. Did you consider at that time that you might be releasing anyone else? A. No.

Q. Did you intend to release anybody else or did you not? A. No, I did not.

Q. You intended to only release the Paramount Construction and the District of Columbia? A. Yes.

Q. Now, was this subject of any possible effect by the issuing of the release brought up in the discussion with Mr. Paul Due, attorney for the defendant in the Baltimore case, and Mr. Leon H. A. Pierson or Mr. Arthur S. Curtis, your attorneys on that case?

MR. STEWART: I object. This is beyond the extent of the proffer that we have discussed so I feel that I should object.

THE COURT: I think you should, too.

BY MR. DAVIS:

Q. Did you seek any legal advice?

193 MR. STEWART: I object.

THE COURT: I'll sustain objection to that.

THE COURT: Now, Mr. Davis, please come to the bench. There may be something additional.

[AT THE BENCH:]

MR. STEWART: I want to make sure this conversation is between this lady and her lawyers.

THE COURT: Yes. I sustained the objection.

\* \* \* \* \*

BY MR. DAVIS:

Q. Mrs. Sitwell, how did you receive this formal release that is before you now? A. I received it by mail.

Q. I show you what has been marked as Plaintiff's Exhibit Number One and ask you if you can identify that? A. Yes.

Q. What is that? Just tell us what it is first. A. It is a letter, dated January 26, 1966.

Q. From whom? A. From Mr. Leon Pierson.

194 Q. And was that the letter transmitting the release to you? A. Yes.

MR. DAVIS: I offer this in evidence if Your Honor please.

MR. STEWART: Your Honor, may I see it?

[Mr. Davis shows Plaintiff's Exhibit Number One to counsel.]

MR. STEWART: No objection.

MR. MURPHY: No objection.

THE COURT: Received, sir.

THE DEPUTY CLERK: Defendant's Exhibit Number One received in evidence.

MR. DAVIS: I'll read this to the jury if Your Honor please.

THE COURT: All right.

MR. DAVIS: Ladies and gentlemen of the jury, Plaintiff's Exhibit Number One is a letter dated Wednesday, January 26, 1966, addressed to Mrs. H. C. F. Sitwell, Three Otters Estate, R. F. D. 2, Bedford, Virginia.

"Dear Mrs. Sitwell:

I enclose a release in duplicate for your signature and acknowledgment. You will note that this settles the case for \$1500.00 and includes your claims against the District of Columbia growing out of this accident which occurred on October 31, 1960.



195

Please sign and return both copies, have both copies witnessed by two witnesses and acknowledge both copies before a Notary. I enclose a Xerox copy so that you may have a copy of the release for your records.

When you send us the release, we will forward them to Mr. Due with Orders of Satisfaction of the case and obtain a draft on whatever insurance company is handling this matter. We will then forward it to you for your signature and when you return it to us, we will send you our check for \$1000.00 and consider the remaining \$500.00 as our fee and Mr. Curtis' fee and also reimbursement for any expenses which we have advanced to date and for which we are not yet reimbursed. These will be reduced somewhat by the fact that the Defendant will have to pay the court costs to record the Order of Satisfaction.

If there is anything about this which is not entirely clear to you or which is not satisfactory, please let me hear from you.

Sincerely yours,

(signed) Leon H. A. Pierson"

MR. DAVIS: Would you mark this, please, as Plaintiff's Exhibit Number Two for identification.

THE DEPUTY CLERK: Plaintiff's Exhibit Number Two marked for identification.

196 [Mr. Davis shows Plaintiff's Number Two to defense counsel.]

MR. STEWART: No objection, Your Honor.

MR. MURPHY: No objection, Your Honor.

THE COURT: Received.

THE DEPUTY CLERK: Plaintiff's Exhibit Number Two received in evidence.

THE COURT: Identify it, please, Mrs. Lyman.

THE DEPUTY CLERK: A letter dated January 25, 1966, to Mr. Leon H. A. Pierson from Mr. Paul F. Due, D-u-e.

THE COURT: Thank you.

MR. DAVIS: Ladies and gentlemen of the jury, Plaintiff's Number Two is a letter on a letterhead of the law firm of "Due, Whiteford, Taylor &

Preston, 301 North Charles Street, Baltimore, Maryland, dated January 25, 1966, addressed to Leon H. A. Pierson, Esquire, Pierson & Pierson, 10 Light Street, Baltimore, Maryland, 21202.

Re: Sitwell v. Paramount  
Construction Company  
Our File C-687  
Civil Action 15041

Dear Lee:

I enclose herewith, Release for execution in duplicate by your client. You will note that I have made specific reference to the District of Columbia, in accordance with our understanding that this payment of \$1500.00 not only releases by client, Paramount Construction Company, Inc. in the litigation pending here, but also the District of Columbia in the suit which your client has pending and growing out of the same accident, which, I believe is Civil Action No. 2634-63.

If you will include an Order of Agreed and Settled, when returning the executed Releases, I shall not file it until I have sent you a draft for \$1500.00.

Very truly yours,

(signed)  
(typewritten)

Paul  
Paul F. Due"

\* \* \* \* \*

BY MR. DAVIS:

Q. Did you have any idea, when you executed Defendant's Exhibit Number One, that that document released Dr. Brian Blades and George Washington University Hospital? A. No.

THE COURT: That is duplication. She has answered, but that is duplication.

198 BY MR. DAVIS:

Q. Mrs. Sitwell, do you recall furnishing your examination before trial, in other words a deposition, in Mr. Stewart's office on September 25, 1967,

over two years ago? A. Of giving a deposition?

Q. Yes. A. Yes.

Q. On September 25, 1967? A. Yes.

Q. Do you recall being asked on page 30 of that deposition: Question: "(inaudible) that you were reporting a law suit? Of course, I'm not speaking of any divorce action?"

THE COURT: Would you give me that page again, please.

MR. DAVIS: Page 30, Your Honor, of the Plaintiff's deposition.

THE COURT: Thank you, sir.

BY MR. DAVIS:

Q. (continued) Answer: "Well, in connection with the accident on the island for which the District of Columbia and the contractor should have been responsible, it was settled out of court, not to very much advantage."

Do you recall giving that answer? A. Yes, yes.

199 Q. Now, before you actually executed this release of February 2, 1966, in Bedford, and then returned it to Mr. Pierson in Baltimore, did you have occasion to discuss this release in Bedford with anyone? A. I discussed it with Miss Shook, Miss Beatrice L. Shook.

THE COURT: Wait a minute, please. I don't think you should continue.

MR. STEWART: The question has been answered.

MR. DAVIS: I believe she was about to add someone else.

THE COURT: All right. I don't mean to cut her off.

THE COURT: (To the witness) Don't tell us what the discussion was.

BY MR. DAVIS:

Q. Don't tell us what the discussion was. Who did you discuss it with?

A. Mrs. McCauley.

Q. And Miss Shook? A. Yes.

Q. As your attorney of record in this action, Civil Action 1176-65, did you ever discuss with me any matters pertaining to this release, Exhibit Number One?

THE COURT: Don't answer that.

BY MR. DAVIS:

Q. Prior to the release, did you discuss it? A. No.

Q. No? A. Correct.

MR. DAVIS: You may cross-examine.

THE COURT: Do you have any cross-examination?

MR. STEWART: I have no questions, Your Honor.

MR. MURPHY: I have none either.

\* \* \* \* \*

MR. STEWART: Your Honor, before Miss Shook takes the stand, you will recall that Mrs. Sitwell was on the stand initially in the presentation of our case. Now, Mr. Davis took her over, rather than to have the lady leave the stand and bring her back.

Now, I think to afford us the opportunity to complete our case, we should simply ask that the defendant's exhibits, which have been marked in this case, be received in evidence.

MR. OLENDER: No objection, Your Honor.

MR. DAVIS: No objection, Your Honor.

THE COURT: They are received.

\* \* \* \* \*

201

BEATRICE L. SHOOK

called as a witness by the Plaintiff, having been duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. DAVIS:

Q. Would you state your full name to the Court and the jury, please.

A. Beatrice L. Shook.

THE COURT: Keep your voice up, please, Miss Shook.

BY MR. DAVIS:

Q. It is Miss Shook, is it not? A. That's right. Beatrice L. Shook.

Q. Where do you live, Miss Shook? A. Bedford, Virginia.

Q. What is your occupation? A. Public Health nurse.

Q. Do you know the plaintiff in this action, Mrs. Phronsie I. M. Sitwell?

A. Yes.

Q. How long have you known her? A. Twenty-three years.

Q. Where do you live in Bedford with reference to her home at Three Otters Estate? A. We live in the same building.

202 Q. Same building? A. Yes, sir.

Q. I direct your attention, Miss Shook, to Defendant's Exhibit Number One, which is headed with the capital letters RELEASE; I direct your attention to the signature, facsimile signature, Beatrice L. Shook, Rt. 2, Bedford, Virginia. Is that your signature? A. Yes, sir.

Q. And when you signed that or prior to signing it, prior to Mrs. Sitwell's signing it, was any discussion had between you and Mrs. Sitwell concerning that release? A. Yes.

Q. What was that discussion?

MR. STEWART: I object.

THE COURT: I sustain the objection from what I now know, sir.

MR. DAVIS: Your Honor sustains the objection?

THE COURT: Yes. From what I know now, I don't see how it could possibly have any value here or admissibility.

MR. DAVIS: Miss Shook . . .

THE COURT: If you want to come to the bench, I'll certainly be glad to hear you, sir.

[AT THE BENCH:]

203 MR. DAVIS: That was almost four years ago, Your Honor, on February 2, 1966, after Mr. Pierson had mailed the release, according to the letter. Therefore, this exhibit would have been transmitted; and before it was signed by Mrs. Sitwell, they had a discussion about what both of them knew concerning the mal-practice case as to whether or not the execution of the release would have any effect legally on this.

THE COURT: I sustain the objection.

[END OF THE BENCH CONFERENCE:]

BY MR. DAVIS:

Q. Prior to the release, did you discuss it? A. No.

Q. No? A. Correct.

MR. DAVIS: You may cross-examine.

THE COURT: Do you have any cross-examination?

MR. STEWART: I have no questions, Your Honor.

MR. MURPHY: I have none either.

\* \* \* \* \*

MR. STEWART: Your Honor, before Miss Shook takes the stand, you will recall that Mrs. Sitwell was on the stand initially in the presentation of our case. Now, Mr. Davis took her over, rather than to have the lady leave the stand and bring her back.

Now, I think to afford us the opportunity to complete our case, we should simply ask that the defendant's exhibits, which have been marked in this case, be received in evidence.

MR. OLENDER: No objection, Your Honor.

MR. DAVIS: No objection, Your Honor.

THE COURT: They are received.

\* \* \* \* \*

201

# BEATRICE L. SHOOK

called as a witness by the Plaintiff, having been duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. DAVIS:

Q. Would you state your full name to the Court and the jury, please.

A. Beatrice L. Shook.

THE COURT: Keep your voice up, please, Miss Shook.

BY MR. DAVIS:

Q. It is Miss Shook, is it not? A. That's right. Beatrice L. Shook.

Q. Where do you live, Miss Shook? A. Bedford, Virginia.

Q. What is your occupation? A. Public Health nurse.



Q. Do you know the plaintiff in this action, Mrs. Phronsie I. M. Sitwell?

A. Yes.

Q. How long have you known her? A. Twenty-three years.

Q. Where do you live in Bedford with reference to her home at Three Otters Estate? A. We live in the same building.

202 Q. Same building? A. Yes, sir.

Q. I direct your attention, Miss Shook, to Defendant's Exhibit Number One, which is headed with the capital letters RELEASE; I direct your attention to the signature, facsimile signature, Beatrice L. Shook, Rt. 2, Bedford, Virginia. Is that your signature? A. Yes, sir.

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MR. DAVIS: Miss Shook . . .

THE COURT: If you want to come to the bench, I'll certainly be glad to hear you, sir.

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THE COURT: I sustain the objection.

[END OF THE BENCH CONFERENCE:]

MR. DAVIS: I have no further questions.

THE COURT: Mr. Stewart?

MR. STEWART: I have no questions.

\* \* \* \* \*

MR. DAVIS: If Your Honor please, I would like to offer this as Plaintiff's Exhibit Number Three for identification.

THE DEPUTY CLERK: Plaintiff's Exhibit Number Three . . .

MR. DAVIS: With attachments A and B.

THE DEPUTY CLERK: . . . marked for identification.

THE DEPUTY CLERK: Plaintiff's Exhibits Numbers Three-A and Three-B marked for identification.

[Mr. Davis shows exhibits to Messrs. Stewart and Murphy.]

MR. DAVIS: I understand there are no objections, Your Honor.

204 THE COURT: Without objection, they are received.

\* \* \* \* \*

THE DEPUTY CLERK: Plaintiff's Exhibits Numbers Three, Three-A and Three-B marked into evidence.

205 MR. DAVIS: Ladies and gentlemen, Plaintiff's Exhibits Three, Three-A and Three-B. Exhibit Three is a letter on the letterhead of Galiher, Stewart & Clarke, dated September 11, 1969, addressed to myself.

"Re: Sitwell v. Blades, et al.  
Civil Action No. 1176-65

Dear Mr. Davis:

In preparation for trial of this case, which you will recall was alerted for trial on September 8, having learned of the settlement by your client of her claim against Paramount Construction Company, I sought to obtain a copy of the release which she executed in connection with such settlement, if, in fact, she did execute a release. I have now obtained a copy and enclose a photostat copy thereof for you and for Mr. Murphy.

I'm writing you to place you on notice that it is my position that the execution of this release by your client is dispositive of her lawsuit against my client in the above-captioned case. In other words, it is the

206 claim of George Washington University Hospital that your client has effectively discharged it from any and all claims of liability against it by reason of the execution of this release. Of course, this defense is not set forth in the Pretrial Order and was not known to me as a defense at that time. If it is your position that we must go through the formality of a supplemental Pretrial to assert this defense, please advise and I will file an appropriate motion. On the other hand, if you will agree that you won't object to the amendment of the Pretrial Order so as to assert this defense, without of course agreeing to its effectiveness, then it seems to me we could handle this before the judge designated as our trial judge.

Very truly yours,

(signed) William E. Stewart, Jr.

cc: Walter J. Murphy, Jr., Esq."

\* \* \* \* \*

MR. DAVIS: Would the clerk please mark this for identification.

THE DEPUTY CLERK: Plaintiff's Exhibit Number Four marked for identification.

207 [Mr. Davis shows the exhibit to Messrs. Stewart and Murphy.]

MR. STEWART: Mr. Davis now has a document which he now shows me and which is his response to my letter.

THE COURT: You agree to do it, Mr. Davis?

MR. DAVIS: Well, I don't know whether he objects to it or not?

MR. STEWART: I do object to it.

THE COURT: All right.

MR. STEWART: We have argued about it on this case. We know we disagree on the case.

THE COURT: That's your issue, ladies and gentlemen. Counsel merely set up their viewpoints, and then you determine which is right.

MR. DAVIS: If Your Honor please, I would like to note for the record, and ask Your Honor to take judicial notice of the date of the Pretrial Order on this case.

THE COURT: I will, sir, and the Pretrial Order, as I read it, was filed February 3, 1969.

MR. DAVIS: I think that's all, if Your Honor please. The plaintiff rests.

\* \* \* \*

208 MR. STEWART: If Your Honor please, on behalf of the defendant George Washington University Hospital, I move you to find as a matter of law that the release executed by Mrs. Sitwell, dated February 2, 1966, in this single-issue proceeding before the Court at this point, be held as a valid, binding instrument, effective as a matter of law, to discharge the George Washington University Hospital and to require the dismissal of this action, with prejudice, that is pending before the Court.

\* \* \* \*

210 MR. MURPHY: If Your Honor please, I would also like to make the motion in similar terms that Mr. Stewart has made on behalf of my client, Dr. Blades.

\* \* \* \*

218 THE COURT: I am going to deny the motion at this time, sir. I have the same concern as I did before. I have a real question as to this, but I will preserve the record for a new motion if it becomes appropriate.

\* \* \* \*

223 THE COURT: Agreeable to the understanding between counsel and the Court, we did meet with these results, insofar as prayers proposed by the different parties:

Plaintiff's number one will be denied; plaintiff number two will be denied; number three will be denied, with an additive of "see charge," which Court and counsel dealt with. Number four will be denied; number five will be granted in substance.

Now, Mr. Stewart and Mr. Murphy, is there anything you would like to say about what the Court has done as to the plaintiff's prayers?

MR. STEWART: No, Your Honor.

224 THE COURT: I now turn to the prayers of the defendant, George Washington University Hospital.

Mr. Stewart, I'll deny one; I'll give you substance of two with the deletion of the phrase "nor to be considered by you as indicative of effect of the release in any wise." Number three: Substance as to the first paragraph; denied as to second paragraph as written, with the additive of "see charge."

Number four denied as to both paragraphs.

Now, Mr. Davis and Mr. Olender, would you gentlemen like to say something as to Mr. Stewart's prayers?

MR. DAVIS: I only note an objection, if Your Honor please, to the granting in substance to defendant's number two.

THE COURT: What is your objection, Mr. Davis?

MR. DAVIS: Objection to number two, if Your Honor please, is that if the evidence already in the case shows that the plaintiff has not made any profit or has not received full satisfaction by accepting the \$1500 settlement in the Paramount Construction case, the evidence which I read and of which Your Honor took judicial notice of the Pretrial statement in this case shows special damages of approximately \$38,000 with continuing physical disabilities.

225 THE COURT: All right, sir. I might say this to you: As I read the case, there are going to be two issues. One, whether there be total satisfaction (I do not understand "satisfaction" being full dollars and cents) and the other being treated as whether or not from all facts and circumstances, an intent was spelled out.

As to number three, Mr. Davis, do you have anything to say to that?

MR. DAVIS: I object to number three, if Your Honor please, because that is not in conformity with the law as I read it.

THE COURT: I am speaking now as to the first paragraph.

MR. DAVIS: Yes, Your Honor. I have set forth in my requested instruction number three some twelve cases that I think correctly express the law, regardless of the fact that the mal-practice was committed subsequently by an attending physician. The attending physician is nevertheless liable as an independent tort-feasor.

THE COURT: Isn't that an elective process? In other words, you could bring your action against the original tort-feasor. . .

MR. DAVIS: I agree that is the law, yes.

THE COURT: . . . and embrace therein all that has transpired including subsequent injuries by hospital or doctor; or you could leave out part of the case of the original tort-feasor or the substance and bring separate action.

226 MR. DAVIS: That's correct, but there has got to be a full satisfaction as against the original tort-feasor for all injuries including the mal-practice.

THE COURT: All right, sir. Let me suggest that you see the charge as given.

MR. DAVIS: All right, sir.

THE COURT: And I'll deny defendant's four. Do you have anything to say to that, sir?

[No response]

THE COURT: You concur, I assume.

THE COURT: Now, turning to Mr. Murphy's prayers as to defendant Blades: One, I will deny as written and say "see charge." As to defendant Blades' two, I'll deny as written and say "see charge." I denied three and I denied four.

Mr. Murphy, would you like to say something for the record?

MR. MURPHY: If Your Honor please, I would like to inquire if I might and find out from the Court what your charge will be with regard to the satisfaction situation. Apparently, Mr. Davis is going to argue that she should have gotten paid for all of the claimed specials, which in the interrogatories run \$30,000 or \$40,000.

227 THE COURT: I am not going to so charge them, sir. I am going to say that they really have two questions for resolution: One, whether there has been complete satisfaction on all the claims presented, whether they flow from the original tort or subsequent torts. But dollars received in compromise or settlement is not controlling. That's one of the ingredients they can give consideration to.



MR. MURPHY: Is Your Honor going to tell the jury that the question of liability has to be considered when one is settling a lawsuit?

THE COURT: Yes, sir. I am going to say that the contention as to District of Columbia and as to Paramount was that neither of those two defendants are liable. They denied any negligence. Similarly, there is a denial as to any negligence hospital-wise or doctor-wise in this case, and they are not passing upon whether they were in fact liable or not liable.

In this case if they hold for the defendants, they will end the case; if they hold for the plaintiff, there will still be for trial the issues presented as to whether there is or is not liability as to Blades and the hospital.

MR. MURPHY: Thank you, Your Honor.

THE COURT: Now, with that, gentlemen, the record is complete as to prayers.

We will recess for about ten minutes and give you a chance to get the exhibits together. If you need more, Mr. Stewart—I guess you will need them first—tell the clerk and she will call and send the marshal in.

MR. STEWART: All right, sir.

[Thereupon, at 10:45 A.M., the Court recessed.]

#### AFTER RECESS

[The Court reconvened at 10:55 A.M.]

[The following proceedings were held out of the presence of the jury:]

MR. DAVIS: If Your Honor please, in sending the exhibits for reference during argument, I have just come across Exhibit Number Ten, Defendant's Exhibit Number Ten, which purports to be a three-page, single-spaced typewritten letter dated October 7, signed by Mrs. Sitwell, addressed to Dr. Parks, Director, George Washington University Hospital. My recollection is that this was identified but never received in evidence. I've never seen it until this morning, as a matter of fact.

Now, I would object to it for several reasons. I just asked the reporter if he had his notes. I assumed it was identified by Mrs. Sitwell. Mrs. Lyman

(the deputy clerk) tells me, "No, it was identified Thursday when Mr. Curtis was on the stand."

The letter contains a lot of hearsay reference and certainly contains one very prejudicial remark on page two, for instance, the paragraph, the last paragraph of page two, where it says: "I was jerked very roughly by a colored aide. . ." Now, with ten jurors being colored, that would be a highly prejudicial—highly prejudicial to this plaintiff.

I know that Mr. Stewart never read it in evidence, or if it were offered in evidence, I would assume that he would have done so then while it was fresh in his mind. I admit it's been identified.

THE COURT: Let me say that there are a lot of statements that, with the approval of the Court, are received but not read to the jury at the time. Of course, it frequently makes for duplication and you have a right to do it.

Mrs. Lyman, what do you show?

THE DEPUTY CLERK: I show that Defendant's Exhibit Number Ten was marked for identification on November 20, 1969, and marked into evidence on November 21, 1969.

THE COURT: Is that your recollection, Mr. Stewart?

MR. STEWART: Yes, Your Honor. I move the admission of all the defendants' exhibits, and there was no objection and this is one of the exhibits.

MR. DAVIS: Well, frankly, I had never seen this until just now.

THE COURT: My recollection of this now has been refreshed. Further than that I say this: We have a very competent clerk.

230 MR. DAVIS: Oh, I agree with you, Your Honor. I have known Mrs. Lyman for years and my recollection may be in error on that. I have never seen this until this morning and if I had seen it, I would have objected to its admission into evidence.

THE COURT: Mr. Stewart, as a gentleman and a member of the Bar, are you interested in saying that the colored orderly or whoever . . .

MR. STEWART: Actually, I have to be quite candid with Your Honor. I had marked several portions of this letter with paper clips and that was one portion that I had marked.

THE COURT: Well, if it is in evidence, you have a right to use it, sir. I don't think at this point I am in a position where I can change it, Mr.

Davis.

MR. DAVIS: Well, I ask Your Honor to reconsider the admissibility of this letter in evidence because it is highly prejudicial.

THE COURT: I don't think I can do that, sir, since it has been received without objection.

MR. DAVIS: Because if I had seen this letter, I would have certainly objected to its admission; not only for that reason, but for the numerous hearsay statements contained in the letter, none of which are subject to cross-examination—statements of other doctors.

231 THE COURT: Mr. Davis, I am not challenging what you say; but on the other hand, when documents are put into evidence and are received in evidence that is "water over the dam." I don't think the Court is in any position to reconsider. I will have to deny your request.

MR. DAVIS: Very well.

\* \* \* \* \*

232

#### AFTER RECESS

\* \* \* \* \*

THE COURT: Ladies and gentlemen, it will soon become your duty to retire to the jury room, select your foreman, and determine the one question which is now before the Court for resolution.

At this point in your service, I am confident that you know it is the duty of the Court to instruct you as to the law of the case—namely, the rules and principles which shall guide you in determining the issues in the case and, furthermore, you are obligated to follow those rules and principles.

233 On the other hand, you, the members of the jury, are the sole judges of the facts. It will be for you to determine all issues of fact from testimony ad-  
duced from the witness stand and from documents, and reasonable inferences  
to be deduced from proved facts and in conformity with your recollection  
thereof.

Counsel for the plaintiff and counsel for the defendants have the right to make what we call opening statements, indicating to you what they hope they may be able to show for their respective sides and at the end of the case to sum up indicating to you what they believe, in fact, they have been able to show for their respective sides.

Now, this is the right and privilege of all counsel. The Court merely says to you that statements of counsel, whether for the plaintiff or for the defendant, do not constitute evidence in the case; and, furthermore, if your recollection be at variance with the recollection of any one or more of counsel and the Court, as far as facts are concerned, it is your recollection that controls, not ours, for the simple reason that you, ladies and gentlemen, are the sole judges of the facts. You, too, are the sole judges of the credibility of the various witnesses who have appeared before you.

And what does this mean? Merely, if a witness is worthy of belief.

234 And how do you determine this? You take into consideration the witness's attitude and demeanor upon the stand, whether he impresses you as a truth telling individual, his opportunity of knowing the facts and circumstances concerning which he has testified, his ability to recall such facts and circumstances, his bias or prejudice, if any be manifested, and his interest in the outcome of the case.

And then you should give to each witness's testimony such weight as you deem it fairly entitled to.

You may have taken note of the fact that I make use of the masculine gender. You, of course, understand that the law is equally applicable to both sexes.

I may have failed to say to you that there is certain evidence before you which the Court took judicial notice of and there were also read to you parts of depositions and certain interrogatories. They are, of course, for your consideration and use.

Now, turning to the particular question. There is before you for resolution one question: Whether the release executed February 2, 1966, by the

plaintiff, Mrs. Sitwell, under all the facts and circumstances in evidence, and this charge, constitutes a valid release of the claims of the plaintiff against George Washington University Hospital and Dr. Blades as well as the District of Columbia and Paramount Construction Company.

- 235 As you know, this matter now before you grows out of an accident in the intersection of Seventeenth and Mount Olivet Road in the District of Columbia on October 3, 1960, which the plaintiff claims was caused by negligence of the District of Columbia and Paramount Construction Company and resulted in certain injuries and damages.

As a consequence thereof, plaintiff filed suits against the District of Columbia and Paramount Construction Company seeking to recover therefor. Both the District of Columbia and Paramount denied any and all allegations of negligence.

Subsequently, the plaintiff filed an action against George Washington University claiming that it was negligent in the treatment and care of her while a patient in its hospital; and also against Dr. Blades, charging that in his treatment and care of plaintiff, he also was negligent.

Both of these defendants, the Hospital and Dr. Blades, deny any and all allegation of negligence and further deny that the plaintiff sustained injuries and damages of the nature and to the extent claimed.

With this state of the record, a document entitled "Release in Full of all Claims" was executed by the plaintiff, witnessed by two persons, and subscribed to before a notary public. It is the contention of plaintiff that the release did not include the action against Dr. Blades and George Washington University Hospital.

- 236 On the other hand, the two named defendants, George Washington Hospital and Dr. Blades, contend that they were covered by the release under its terms and that any and all of the alleged injuries and damages asserted against them were properly and legally charged in the suit against the District of Columbia and Paramount as an outgrowth of alleged negligence of the District and Paramount, and that it was the intention of the plaintiff to release not

only the defendants District of Columbia and Paramount but also George Washington Hospital and Dr. Blades, and that this settlement with the District of Columbia and Paramount did actually constitute satisfaction of all injuries and all damages caused by the wrongs of the District of Columbia and Paramount and George Washington Hospital and Dr. Blades and was intended as such.

It is the law that the plaintiff is entitled to receive no more than actual satisfaction of her claims.

There is specific testimony in this case by the plaintiff that she did not intend to release the defendants George Washington Hospital and Dr. Blades when entering into the release on February 2, 1966; that her intention was to only release the defendants District of Columbia and Paramount in connection with the original accident.

This testimony is not dispositive of her intent. That testimony is to be construed by you in connection with all the other circumstances and evidence in the case.

- 237 In reaching a resolution of the question here presented, you should consider whether the evidence shows that in the claims against the District of Columbia and Paramount plaintiff claimed or excluded the same injuries and damages asserted in the action against George Washington Hospital and Dr. Blades, namely for hernia operations and for any abdominal distress resulting therefrom, as well as for a possibility of future operations and for a staphylococcus aureus infection.

You are instructed that it is no defense for a wrongdoer, whose negligence caused or contributed to cause injuries to a person, to say that others also caused or contributed to the harm and injuries claimed.

Each wrongdoer under the law is responsible for the whole, that is, all of the injuries.

On the other hand, the injured person may not have more than full satisfaction. The injured person cannot make profit from the harm and injuries suffered simply because several persons shared in causing such harm and injuries.

Under the law, when one of the wrongdoers makes reparations for the whole loss, that is the harm and injuries as claimed against all of the wrongdoers,



238 then other wrongdoers who have not paid anything in the way of damages to the injured person are released and discharged from the liability to the injured person.

In considering whether Mrs. Sitwell made claim against Paramount Construction Company and the District of Columbia for the whole, that is, all of her injuries, including those which she claims in this suit were caused or aggravated by the negligence of defendant Hospital and Dr. Blades, you are instructed as a matter of law that the consideration for the release, that is the amount of \$1,500.00 settlement, is not determinative nor to be considered by you as indicative of the effect of the release.

And you are further instructed that under the law where one has received a personal injury as a result of negligence of another and pursues due care in the selection of the physician or surgeon and hospital to treat the injuries and they are aggravated by the negligent treatment of such physician or surgeon or the hospital, the person causing the original injuries is liable for resulting damages to the full extent.

Also, if such injured person receives negligent medical care which results in additional injuries which present a natural and probable connection between the wrong done by the original wrongdoer and the injurious consequences, such injuries are likewise the responsibility of the original wrongdoer.

239 Therefore, if you find from the evidence in this case that Mrs. Sitwell was involved in an automobile accident on October 31, 1960, and brought suits against Paramount Construction Company and the District of Columbia for the immediate injuries suffered by her and all the injuries that naturally and proximately flowed from such accident, including her claim of additional injuries and damages including hospitalization and surgery, during the course of which further injuries were allegedly suffered by her at the hands of the defendants George Washington Hospital and Dr. Blades, and that she thereafter settled such claims, then you are instructed as a matter of law that the plaintiff has had satisfaction for all of her claims and your verdict should be for the defendants George Washington Hospital and Dr. Blades.

If you find that the defendants have proved by a preponderance of evidence that the settlement did actually constitute satisfaction of all damages flowing from the negligent acts of the District of Columbia, Paramount, George Washington Hospital, and Dr. Blades, then your verdict would be for the defendants George Washington Hospital and Dr. Blades. In such event, her claims against those two, the Hospital and Dr. Blades, would be dismissed.

On the other hand, if you find that the defendants George Washington and Dr. Blades have failed to prove by a preponderance of the evidence that the settlement did actually constitute satisfaction of all damages flowing from  
240 the negligent acts of the District of Columbia, Paramount, George Washington Hospital and Dr. Blades, then your verdict would be for the plaintiff, Mrs. Sitwell.

In such event, her action against George Washington Hospital and Dr. Blades will be set for trial to determine whether they were negligent and whether or not such negligence was a proximate cause of any of her claimed injuries and damages.

When you took your places in the jury box, each of you swore you would determine the issues in this case from the testimony adduced from the witness stand and reasonable inferences to be deduced from proven facts and in conformity with your recollection.

The possible verdicts in this case are (1) for the defendants George Washington Hospital and Dr. Blades or (2) for the plaintiff. Whatever your verdict be, it must be unanimous.

Counsel, come to the bench.

[AT THE BENCH:]

[There follows a conference at the bench not reported as a part of this transcript.]

[END OF THE BENCH CONFERENCE]

THE COURT: Counsel very properly called the Court's attention to the fact that when the Court referred to the \$1500.00 settlement, it failed to say to you that that was a compromise settlement. It was a settlement out of

241 court; and further, I should say to you, I believe did say to you, that the mere fact that the plaintiff didn't get every dollar that she wanted is not controlling on you.

[Court inquires if counsel are now satisfied with the instructions as given, and counsel indicate that they are.]

THE COURT: Ladies and gentlemen, it now becomes your duty to retire to the jury room to consider and decide the case. I repeat to you the possible verdicts in this case are (1) for the defendants or (2) for the plaintiff. Whatever your verdict be, it must be unanimous.

\* \* \* \* \*

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[AT THE BENCH:]

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\* \* \* \* \*

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,979

PHRONSIE IRENE MARSHA SITWELL,

*Appellant,*

v.

THE GEORGE WASHINGTON UNIVERSITY  
d/b/a THE GEORGE WASHINGTON  
UNIVERSITY HOSPITAL

and

DR. BRIAN BLADES,

*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

*Of Counsel:*

Galiher, Stewart & Clarke  
United States Court of Appeals  
for the District of Columbia Circuit

FILED OCT 20 1970

*Nathan J. Paulson*  
*Of Counsel:*

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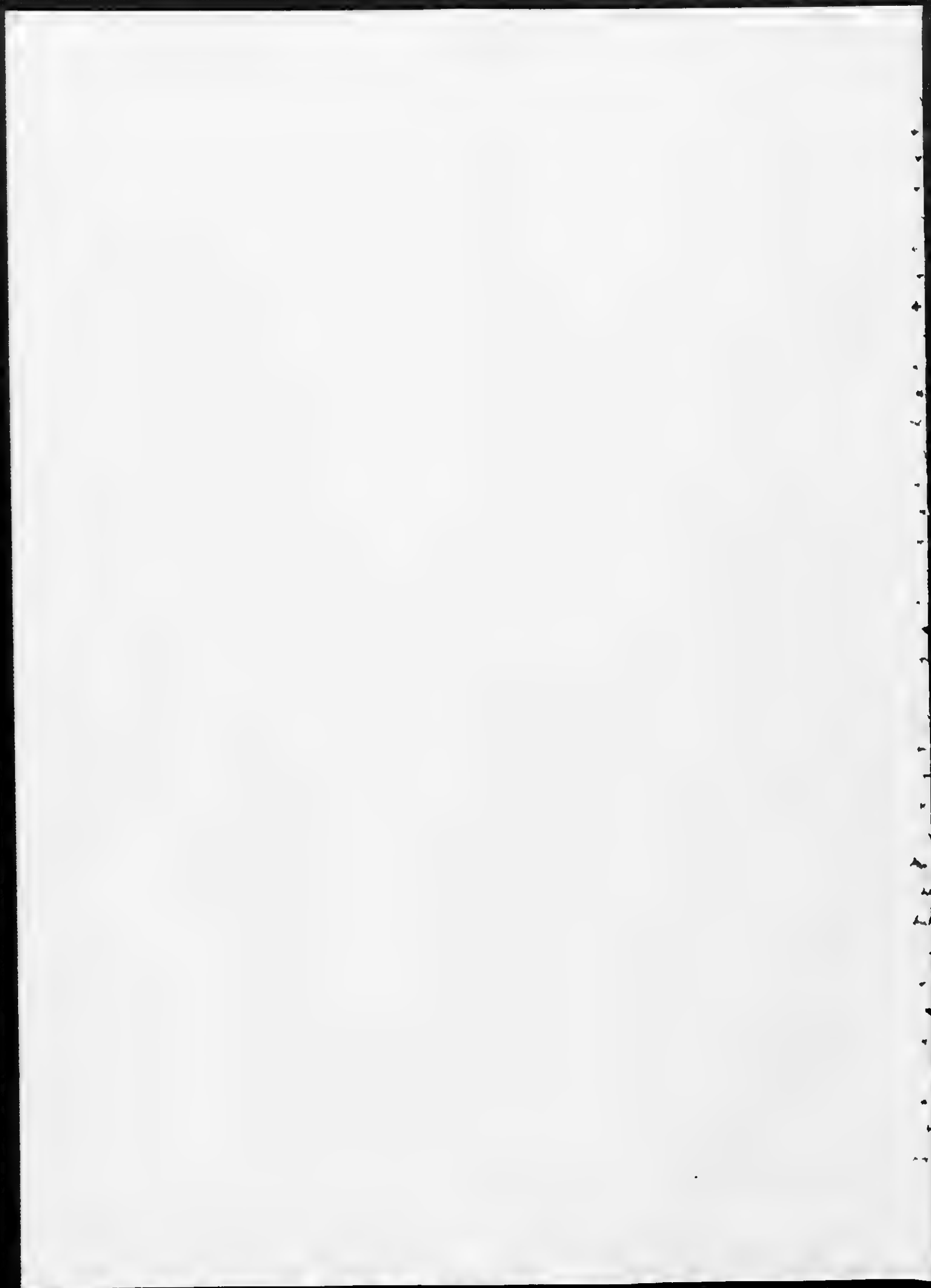
The George Washington University  
d/b/a The George Washington  
University Hospital

Walter J. Murphy

*Attorney for Appellee*

Brian Blades, M.D.





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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 23,979

---

PHRONSIE IRENE MARSHA SITWELL,  
*Appellant,*

v.

THE GEORGE WASHINGTON UNIVERSITY  
d/b/a THE GEORGE WASHINGTON  
UNIVERSITY HOSPITAL

and

DR. BRIAN BLADES,  
*Appellees.*

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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BRIEF FOR APPELLEES

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ISSUE PRESENTED

Whether or not the legal effect of a general release may be avoided by a mental reservation or unexpressed intention to release only the specific persons named in the release and a mental reservation or intention to release only part of the injuries for which those specifically named are liable.

## STATEMENT OF THE CASE

This is a suit in which the appellant herein, Mrs. Sitwell, alleges medical malpractice against The George Washington University Hospital and Dr. Brian Blades. The defendants raised as a defense a general release given to Paramount Construction Company and the District of Columbia the parties alleged by Mrs. Sitwell to have caused the injuries for which she was being treated by the appellees herein when the alleged medical malpractice occurred.

The defense of the release was severed from the basic case and tried separately on the sole issue of whether Mrs. Sitwell's mental reservation, unstated in the release, as to the effect of the release would control or whether the document itself controlled. As stated by counsel the issue tried was:

Mr. Davis: The sole issue of the case is her intention.  
J.A. (P. 45)

Mr. Davis: We don't hold to amend that particular agreement. We do dispute the legal effect of it as to the release of these defendants. There is only one issue of fact and that is her intention when she signed it. T.R.  
(P. 121)

This issue as framed by Mr. Davis was submitted to the jury although Judge Keech expressed considerable reservations as to the legal efficacy of an intention not expressed in a general release to limit its effects to the persons actually named in the release. The jury found that Mrs. Sitwell had not intended to release joint or subsequent tortfeasors despite the general language of the release as to the persons released and the injuries covered. Judge Keech, pursuant to motion by the appellee granted judgment nonobstante veridicto or in the alternative a new trial.

The evidence at the trial revealed that Mrs. Sitwell was a retired school teacher with very nearly the full requirements for a PhD. and who had succeeded in publishing several literary works. J.A. (P. 114-116) Mrs. Sitwell testified that she had sued the Southern Railroad for injuries received in an accident prior to 1960 and that she sued Paramount Construction Company in the federal court in Baltimore and the District of Columbia in the U.S. District Court for the District of Columbia for an accident which occurred on October 31, 1960 in the District of Columbia. The claims of injury in that suit were very extensive J.A. (P. 33-37); (P. 37-43); (P. 81-109); but there was no dispute that the injuries alleged in that suit led directly to the treatment rendered by these defendants and that the cost of the care as well as subsequent medical care was claimed by Mrs. Sitwell to flow from the accident of October 31, 1960. J.A. (P. 33-37); (P. 37-43); (P. 81-109).

In addition to the above litigation it appeared that Mrs. Sitwell had pending a suit against the Government Employees Insurance Company for medical payments arising out an automobile accident which occurred on November 14, 1961 J.A. (P. 117); and a suit against the Evans Farm Inn was pending for a fall which occurred on July 17, 1963 J.A. (P. 117-118) and she had tried to judgment a case in Bedford County on April 28th and 29th of 1965 for personal injuries arising out of an automobile accident in which Mrs. Sitwell claimed that the hernia repair performed by Dr. Blades was torn. J.A. (P. 116-117).

Mrs. Sitwell was permitted to testify that she did not intend the general release given to Paramount Construction Company and the District of Columbia to have the effect of releasing her claim for the medical treatment rendered by these defendants. Mrs. Sitwell was represented by counsel when she signed the release J.A. (P. 44). Mrs. Sitwell was a resident of Virginia at all pertinent times and executed the release in Virginia. J.A. (P. 31-32); (P. 72-73).



### SUMMARY OF ARGUMENT

1. The release in this case was executed by Mrs. Sitwell in Virginia and as such is governed by the law of Virginia.
2. The general rule is that a release is to be interpreted by the writing itself unless it is ambiguous on its face.
3. The original tortfeasor is liable for aggravations of the original injury flowing from medical treatment necessitated by that treatment and a general release of the original tortfeasor releases the claims for the aggravation of the injury.
4. There can be but one satisfaction for an injury and a release of all the injuries caused by or growing out of the original accident releases any claim against any person who is alleged to be liable for part of those injuries.

### ARGUMENT

#### I

#### THE RELEASE IN QUESTION IS GOVERNED BY VIRGINIA LAW

Under the applicable law, the release of Paramount Construction Company, Inc. and the District of Columbia, whose negligence caused the original injuries, for which Plaintiff sought medical treatment from this Defendant, also released this Defendant from liability for medical negligence in the treatment of those injuries. This release was executed in Virginia and must be interpreted according to the law of that state; *Young v. State Farm Mut. Auto. Ins. Co.*, 213 A.2d 890.

**A UNILATERAL MISTAKE AS TO THE LEGAL  
EFFECT OF AN UNAMBIGUOUS DOCUMENT  
HAS NO EFFECT ON THOSE LEGAL CONSEQUENCES**

It is Plaintiff's position that the mere fact that she did not intend the release to apply to the present Defendants is sufficient in law to keep it from so applying. However, that would constitute only a unilateral mistake which would not be sufficient to invalidate the release or to alter its terms.

As succinctly stated in *Clampitt v. Ponder*, 91F. Supp. 535, at page 543:

"... To entitle a party to reform a written instrument on the ground of mistakes, it is essential that the mistake be mutual and common to both parties. The testimony must show that the instrument as written does not express the contract of either of the parties . . . The above is the rule unless it appears that there was a mistake on the part of one of the parties, coupled with fraud on the part of the other . . . here there is no allegation or claim by the defendant that the plaintiffs were guilty of fraud. There was no mutual mistake of fact. The grantors were fully advised of the provisions of the deed when they executed it and in the absence of fraud practiced upon them, they are charged with the legal effect of their intended language in the reservation . . . mere mistakes of a party as to the legal effect of an instrument does not vitiate the instrument or afford ground for reformation . . ."

A unilateral mistake of law does not entitle the person in error to relief, *Eastman v. U.S.*, 257 F. Supp. 315 (D.C. Ind. 1966).

In *Rexrode v. Vinson*, 131 U.S. App. D.C. 252, 404 F. 2d 830 (1968), this Court held that a release, as a settlement instrument, is not contra to public policy and must be given effect according to

its terms. And in *Wells v. Rau*, 129 U.S. App. D.C. 253 (1968), the Court approved, at page 255, the following language taken from Corbin, Vol. 6, Contracts, 181-182:

"If a claim is made for damages for an injury, a compromise settlement is ordinarily not made voidable for a mistake because the injury was greater and lasted longer than was expected at the time of the settlement, if the parties knew or had reason to know that the extent of the injury was uncertain and that was the very reason for the compromise . . ."

In *Miller v. Super Seal Container Corp.*, 62 F. Supp. 578, at page 579, the Court held:

"Formal and solemn documents such as a release, are not to be lightly ignored or set aside. Else the security and sanctity of contracts would be shattered, and persons could not deal with one another in reliance upon the binding character of obligations that may be entered into between them."

In *Randolph v. Ottenstein*, 122 U.S. App. D.C. 414 (1965), the Court took into account that the person attempting to set aside the release was an experienced attorney and the Court refused to accept his contention that the release be invalidated because a different physical injury was involved which did not come to light until after the execution of the release.

In *Chenault v. Miller*, 184 A.2d 852 (D.C. Mun. App. 1962), the Appellant sought to recover for personal injuries as a result of a fall while on Appellee's bus. Appellee claimed the action was barred by a standard executed release, executed by Appellant on the advice of her attorney. The Court first rejected her contention that the release was invalid because of fraud and misrepresentation on the part of her own attorney and then the Court held:

"Considering the circumstances under which this release was executed, appellee cannot be held responsible for representations not made, authorized, or participated in by it. Nor can we agree with appellant's contention that the release should be set aside on the ground that she did not understand its effect or the circumstances surrounding its execution. The fact remains that the release was executed by her on the advice of counsel."

In recognition of the fact that the original law suit filed by the Plaintiff was against Paramount Construction Company in the United States District Court for Maryland and that apparently, the negotiations which resulted in the compromise and settlement and the subsequent execution of the release herein involved occurred in the State of Maryland, it could very well be that the interest of the State of Maryland and the public policy of that state with respect to the execution of a release and the filing of an Order of satisfaction constitute the binding law in this case. Under the modern version of conflicts of law problems, it would appear that the State of Maryland may be likely to be treated as having the greater interest in this matter of the several jurisdictions which might be considered to be involved to one extent or another. Since this is so, the Court's attention is respectfully invited to the case of *Pemrock, Inc. v. Essco Co.*, (decided February 10, 1969, C.A. Md.), 252 Md. 374, 249 A.2d 711.

In the Pemrock case, Pemrock engaged Essco Co. to erect two prefabricated poultry houses and about a year after Pemrock had accepted the houses from the builder and began to use them, a storm with strong winds and heavy snow struck and soon the houses collapsed with great resultant damage. The New Castle Mutual Insurance Company had insured the houses up to \$40,000.00 against all direct loss by windstorm. Pemrock and First National Bank of Maryland, its first mortgagee, sued New Castle which impleaded Essco and

Anderson on the claim that there had not been a direct loss caused by wind but rather a loss resulting proximately from faulty materials and negligent construction. Pemrock then filed an Amended Declaration in two counts, the first claiming from New Castle on the insurance policy and the second claiming against Essco and Anderson for their negligence. There was a mistrial and Pemrock thereafter succeeded in having an equity court reform the policy to show clearly that there had been windstorm coverage. New Castle appealed and during the pendency of the appeal, Pemrock settled with New Castle for \$10,000.00 and executed an Order which was filed in the case in the following language:

"Please mark the above case agreed, settled, satisfied and dismissed with prejudice as to the defendant, New Castle Mutual Insurance Co., only"

Pemrock and First National Bank each also executed a writing under seal, which provided that in consideration of \$10,000.00 they released New Castle,

"and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, causes of action, demands rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, bodily and person injuries and property damage and the consequences thereof resulting or to result from the accident, casualty or event which occurred on or about the 30th day of January, 1966 at or near Pemberton Drive, Rt. 5, Salisbury, Wicomico County, Maryland, and particularly with reference to any Company liability under its Policy No. 49651 dated August 1, 1964, issued to Pemrock, Inc. and all endorsements made and attachable or attached thereto."

Essco and Anderson thereupon each moved for summary judgment, on the basis of the order of satisfaction and release. Pemrock answered, alleging that the effect of the order of satisfaction was only to terminate the case as if there had been adjudication in favor of New Castle and that the filing of the order was equivalent to a finding that the poultry houses had not been destroyed by windstorm, so that there was no bar to further proceedings against Essco and Anderson. Pemrock's answer further alleged that the release was no more than, "an agreement not to sue the New Castle Mutual Insurance Company given pursuant to an agreement (handwritten between New Castle's lawyer and Pemrock's lawyer), a copy of which is attached hereto," that New Castle will pay \$10,000.00 for Pemrock's order of satisfaction running to New Castle alone, retaining the action of Pemrock, Inc. against all other defendants and this agreement is the real agreement between Pemrock and New Castle and Essco and Anderson are not parties to it and cannot claim any benefit by it. New Castle's lawyer made an affidavit in support of Pemrock's answer in which he said, in part,

"there was no intention \*\*\* to enlarge or change our agreement \*\*\* by the execution \*\*\* of the general release under date of September 21, 1967; and that it was not our intention that the release given to [New Castle] \*\*\* should release any of the other parties to these proceedings as [New Castle] was acting only for itself \*\*\*"

Summary judgment was granted in favor of Essco and Anderson.

In the opinion written by Chief Judge Hammond, though there was initial indication that the questions involved included the doctrine of election of remedies, the collateral source rule and the effect of a release in favor of all mankind, he states, at page 714,



Anderson on the claim that there had not been a direct loss caused by wind but rather a loss resulting proximately from faulty materials and negligent construction. Pemrock then filed an Amended Declaration in two counts, the first claiming from New Castle on the insurance policy and the second claiming against Essco and Anderson for their negligence. There was a mistrial and Pemrock thereafter succeeded in having an equity court reform the policy to show clearly that there had been windstorm coverage. New Castle appealed and during the pendency of the appeal, Pemrock settled with New Castle for \$10,000.00 and executed an Order which was filed in the case in the following language:

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"and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, causes of action, demands rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, bodily and person injuries and property damage and the consequences thereof resulting or to result from the accident, casualty or event which occurred on or about the 30th day of January, 1966 at or near Pemberton Drive, Rt. 5, Salisbury, Wicomico County, Maryland, and particularly with reference to any Company liability under its Policy No. 49651 dated August 1, 1964, issued to Pemrock, Inc. and all endorsements made and attachable or attached thereto."

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In the opinion written by Chief Judge Hammond, though there was initial indication that the questions involved included the doctrine of election of remedies, the collateral source rule and the effect of a release in favor of all mankind, he states, at page 714,

"We are entirely persuaded that Pemrock is barred as a matter of law by reason of the release it gave New Castle from proceeding against Essco and Anderson and that no useful or beneficial purpose would be served by discussing further or deciding the applicability to the case before us of the doctrines and rules of law to which we have referred."

The Court discusses at length in its opinion the development of Maryland law on the subject of releases, their interpretation and the admissibility of parol evidence to vary, alter or contradict a writing which is complete, unambiguous and valid where no fraud, accident or mistake is claimed. Referring to one of its previous decisions, in the case of *Ray v. William G. Eurice & Bros.*, 201 Md. 115, 125, 127, 93 A.2d 272, 279, the Court stated that absent fraud or duress,

"\*\*\* if a contract has been integrated, it may not be varied by parol in the absence of mutual mistake, not will be rescinded or redrafted by the Court if one of the parties finds that he has made a bad deal or has become dissatisfied with its provisions \*\*\* Finally, where there has been an integration of an agreement, those who executed it will not be allowed to place their own interpretation on what it means or was intended to mean. The test in such case is objective and not subjective."

The Court also referred to its previous decision in *Thomas v. Erie Ins. Exchange*, 229 Md. 332, 182 A.2d 823, wherein the Court held, at page 715;

"That a release given upon settlement by a claimant to the automobile driver she had sued for damages resulting from an accident on August 16, 1959, and to 'all other persons, firms or corporations liable or who might be claimed to be liable \*\*\*', from any and all claims \*\*\* which have resulted or may in the future

develop \*\*\*' from an accident on August 16, 1959 barred the claimant from recovering from the driver's insurer medical expense payments of which the claimant would otherwise have been a third party beneficiary, and otherwise would have received twice, once in the settlement and once under the policy. It was stipulated that the claimant, were she present at the trial would testify that she had no intention of releasing the medical pay benefits by signing the release. We said:

'There is nothing to indicate bad faith on the part of the appellee to show that it knew or suspected that the appellant did not fully understand the import and effect of the paper she signed. There was no duty imposed on the appellee to explain the effect of the release when she had ample opportunity to read the instrument, capacity to understand it, and was represented by counsel during the negotiations when her special damages for medical expenses were discussed. She is chargeable with her own carelessness or failure to appreciate the legal effect of the instrument she signed. [citing *Glass and Ray v. Eurice*, and various other authorities].' (229 Md. at 339, 182 A.2d at 826.)

'In the 1964 pocket parts of 3 Corbin on Contracts §574 n. 16, Professor Corbin cites *Thomas v. Erie* with approval and expressed surprise that in such a case two judges would dissent. See *Lanasa v. Beggs*, 150 Md. 311, 323, 151 A.2d, 26 where Judge Parke for the Court said:

'The court must construe an instrument according to its plain meaning and legal effect, and will not be diverted from this course by self-serving declarations of the interested parties that conflict with the object and clear meaning of the document. The pro-

visos that the instrument in question is not a release and that the right to recover for the same injury against the other wrongdoer remains unimpaired are nugatory because repugnant to the primary meaning and legal effect and operation of the instrument itself. *Gunther v. Lee*, 45 Md. 60, 67.'

"See also *Panichella v. Pennsylvania Railroad Company* (3d Cir.), 268 F. 2d 72, cert. denied 361 U.S. 932, 80 S.Ct. 370, 4 L.Ed. 2d 353, where Panichella sued his employer, the railroad which impleaded the owner of a restaurant to which he had gone at the railroad's direction to eat and on whose sidewalk he had fallen on ice. Panichella settled with the restaurant owner and gave a release just like that in the case before us. The Court held that the release barred his claim against the railroad, although it was not named in the release and had no knowledge of the settlement or of the release until over a month after its execution. In *Canillas v. Joseph H. Carter, Inc.* (S.D.N.Y.), 280 F. Supp. 48, Judge Bryan in discussing the three rules as to joint tortfeasors—the common law rule that a release to one releases all others, the Restatement rule that a release to one releases all unless there is a reservation of right and the Uniform rule that the release of one does not release others liable unless the release so provides—, said of the Panichella release:

'There, the release \*\*\* expressly provided for the discharge of all other persons, firms corporations from liability, and thus was a bar under any of the three rules which have been mentioned.' " (280 F. Supp. at 53)

Suffice it to state that it is the position of the Defendants, hospital and surgeon, that the language of the release (J.A. 20) is strikingly similar to that passed upon by the Court of Appeals of Maryland in *Pemrock, Inc. v. Essco Co.*, cited *supra*. The facts and the

alignments of the parties are strikingly similar and the prohibition as announced by the Court in its opinion against a party to the instrument attempting to place her own interpretation on what the document means or was intended to mean is clearly applicable to Mrs. Sitwell in this case.

It seems important to counsel for the defendant hospital and defendant surgeon, that in this case, Plaintiff insisted that the release itself was a valid and binding document; that she did not contend there was any fraud or mutual mistake of the parties in the execution of this instrument (J.A. 121). Her sole contention is that the legal result of the execution of the document, as contended for by the Defendants, based upon the language of the release, was not her intent in executing the document. Furthermore, there was no showing whatsoever of the intent of the other parties to the release. Even in the cases which Mrs. Sitwell contends support her position as to the admissibility of testimony regarding intent, those cases clearly specify that the burden of proof as to intent is upon Plaintiff. It seems perfectly obvious that Plaintiff's desired limitation of the release executed by her could have been very simply accomplished by the insertion of a reservation of her right of action against the hospital and the surgeon defendants and/or by other words of limitation which would have clearly specified the intent that she now contends to be controlling.

### III

**A GENERAL RELEASE OF THE ORIGINAL TORT FEASOR RELEASES ANY PERSONS ALLEGED TO HAVE AGGRAVATED THE ORIGINAL INJURIES DURING THEIR TREATMENT BECAUSE THERE CAN BE ONLY ONE SATISFACTION**

In a 1966 decision, *Fletcher v. Hand*, 123 U.S. App. D.C. 182, 338 F.2d 549, our Court of Appeals had occasion to resolve this question under Virginia law, and it accepted the Appellee's theory:



"To the extent that the original tort-feasor is accountable for the damage caused by medical negligence in the treatment of the injuries caused by him, he stands in the relationship of a joint tort-feasor to the offending physicians; and a release to the former discharges the latter. Translated into the terms of this case, if the daughter's liability extended to the hip fracture, it must be taken to have included aggravating damage caused by negligent medical treatment of that fracture; and a release of the daughter operated to extinguish appellee's liability for any damage for which the daughter could have been made to respond."

While the Court expressly stated that it was basing its decision on Virginia law, research has failed to disclose a single case decided in this jurisdiction which suggests that the District of Columbia law would differ from the Virginia law and *Cokas v. Perkins*, 252 F. Supp. 563 (D.C.D.C. 1966) indicates it would not.

Another aspect of the *Fletcher v. Hand* decision is also important. As has been shown, the Plaintiff executed the release in question in settlement of law suits against the District of Columbia and Paramount Construction Company, in which she had claimed the same injuries and damages as she is now seeking in the present law suit against this Defendant. Confronted with this situation, the Court, in the *Fletcher* case, at page 185, held:

"... we see no need to send this case back for a determination of whether the knee injury and the hip fracture were so causally related as to render appellant's daughter liable for damages caused by medical negligence in the treatment of the latter. The record made at the hearing establishes an affirmative assertion by appellant herself of such a connection, made under circumstances which preclude a denial of that connection now. She clearly claimed such a relation-

ship in her Virginia suit against her daughter, *and her release of that claim is surely as broad as the claim itself*. The hip fracture may or may not have been, in fact or in law, a foreseeable consequence of the daughter's initial neglect to which the daughter's liability extended. But appellant has so represented it in her Virginia suit, and a release settling that suit must be construed in the light of that representation." (Emphasis added)

There is an annotation found in 40 A.L.R. 2d 1075, "Release of One Responsible for Injury as Affecting Liability of Physician or Surgeon for Negligent Treatment of Injury," a reading of which shows that the law as set forth in *Fletcher v. Hand*, supra, is in conformity with the great weight of authority. On page 1077, it is written:

"By the weight of authority, a general release of the one responsible for the releasor's original injury bars action by the injured party against a physician or surgeon for the negligent treatment of the injury. The most commonly followed reasoning in support of this position is that since the one causing the original injury is liable for the consequences of the physician's negligence, which would not have occurred 'but for' the original negligence and injury, where the physician was selected with due care by the injured party, a release of the one so liable must be considered to have been a release of the claim based upon the physician's negligence as well as the negligence of the original wrongdoer."

And at page 1078, the following language appears:

"Apart from particular theories, it is the great weight of authority that a general release executed in favor of one responsible for the plaintiff's original injury, at least if a different intention is not positively revealed by the

language of the release, or the circumstances, precludes an action against a physician or surgeon for damages incurred by his negligent treatment of an injury, at least in the absence of a finding that the negligence of the physician or surgeon produced an entirely new injury."

This annotation is updated in the A.L.R. 2d later case service, Vol. 4, page 689, wherein several cases are cited for the "Minority View; Release in Itself not a Bar." However, a reading of those cases shows that in none of them had the plaintiffs claimed the same injuries and damages against the physician as had been claimed against the original tort-feasor for whom the release was executed.

Likewise, in a annotation found at 73 A.L.R. 2d 403, entitled "Release of One Joint Tort-Feasor as Discharging Liability of Others: Modern Trends," discusses, beginning on page 522, "Modern Rule that Release of One Tort-Feasor does not, of Itself, Discharge Others; Intention of Parties to Release as Test." It is interesting to note that the leading case discussed under this subheading is the District of Columbia case of *McKenna v. Austin* (1943), 77 App. D.C. 228, 134 F.2d 659, 148 A.L.R. 1258. However, the Plaintiff in the present action can take little consolation from the language of *McKenna v. Austin*, for in that case, the "release" contained an express reservation of rights to make a claim against a non-settling tort-feasor, Austin and it was on that basis that the Court held Austin was not discharged by the release.

Expressive of the law applicable to this case is the language of the Court in the case of *Perryman & Company, Inc. v. Penn Mutual Fire Ins. Co.*, 324 F.2d 791, where the Court treated the subject of release and dismissal of a previous action in this fashion, at page 793:

"It seems elementary that the release of the claims asserted in a suit would be a complete bar to the

subsequent assertion of such claims. We think that if the suit had proceeded to judgment for the appellant, that judgment would have been a bar to the claim asserted in this cause. The compromise, settlement and release are as conclusive as a judgment would have been if the claim had been litigated rather than compromised and settled. *J. Kahn & Co. v. Clark*, supra. The dismissal with prejudice adds res judicata to the release as barring recovery by the appellant. The summary judgment was proper."

Another manner of putting the situation in perspective is to ask whether the original tortfeasor has a right of indemnity for the extent of the aggravation against the person aggravating the injury by malpractice. The Courts which have dealt with the question have answered affirmatively. *Herrero v. Atkinson* (1964) 227 Cal. App. 2d 69, 38 Cal. Rptr. 490; *Clark v. Halstead*; (1949) 276 App. Div. 17, 93 NYS 2d 49, *Primes v. Ross* (1953) 123 NYS 2d 702; *Rezza v. Isaacson* (1958) 13 Misc 2d 794, 178 NYS 2d 481; *Fisher v. Milwaukee Electric R. and Light Co.* (1920) 173 Wis. 57, 180 N.W. 269; *Noll v. Nugent* (1934) 214 Wis. 204, 252 N.W. 574; *Green v. Waters* (1951) 260 Wis. 40, 49 N.W. 2d 919. These cases hold that a claimant may not recover compensation twice for the same injury and if a settlement is obtained from the original tortfeasor he, the original tortfeasor, stands in the shoes of the claimant and may enforce the injured parties right to compensation from the physician, because the settlement by the first tortfeasor is presumed in law to have included compensation for the injury occasioned by malpractice which was committed before the release to original tortfeasor was executed and for which the law holds the original tortfeasor liable.

Finally the appellees rely upon an extremely well reasoned opinion in the Maryland Court of Appeals, *Kyte v. McMillion*, (1969) 256 Md. 85, 259 A.2d 532. In this case is clearly set forth what



should be done to preserve separate causes of action against the original tortfeasor and a subsequent one against one accused of aggravating the original injury by medical malpractice. Quite simply it required only that Mrs. Sitwell's attorneys segregate the injuries claimed and reserve her rights in the release. In that case there would be no problem as to double recovery or the right of indemnity.

### CONCLUSION

Mrs. Sitwell, a well educated person who was represented by two attorneys entered into a general release for all her injuries which were caused or at least alleged to be caused by the Paramount Construction Company and the District of Columbia. These parties were liable and were specifically alleged to be liable for the medical and hospital treatment rendered by the appellees herein and they and the injuries they are alleged to have occurred were thereby released and any claim for those injuries is now the claim of Paramount by reason of indemnity. This reasoned and reasonable result should not be frustrated by a claim of unilateral mistake of law by a well educated lady represented by counsel.

Respectfully submitted,

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